RENT AND MORTGAGE INTEREST RESTRICTIONS.

ELEVENTH EDITION.

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RENT AND MORTGAGE INTEREST RESTRICTIONS.

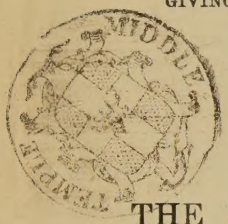
BEING

THE INCREASE OF RENT AND MORTGAGE INTEREST (Restrictions) ACT, 1920, THE INCREASE OF RENT AND MORTGAGE INTEREST RESTRICTIONS (Continuance) ACT, 1923, THE RENT RESTRICTIONS (Notices of Increase) ACT, 1923, THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923,

AND

THE PREVENTION OF EVICTION ACT, 1924.

FULLY ANNOTATED, INCORPORATING THE DECISIONS ON THE SUBJECT, AND OTHER RELEVANT STATUTORY ENACTMENTS; WITH AN INTRODUCTORY SKETCH OF THE EFFECT OF THE ACTS; AND APPENDICES GIVING THE TEXT OF THE REPEALED ACTS AND THE RULES MADE UNDER THE ACTS.



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PREFACE

TO THE ELEVENTH EDITION.

SINCE the publication of the Tenth Edition of this book not only have judicial decisions on its subject-matter been augmented to an extent which in itself would justify a new edition, but fresh legislation, viz., The Prevention of Eviction Act, 1924, has reached the Statute Book.

The task of ascertaining the law on the subject is certainly not an easy one. The inquirer has now to deal with four separate Acts—five, if the comparatively unimportant Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, be counted. The very names of these Acts (similar, but minutely different, the presence or absence of brackets assuming algebraic importance) perversely invites erroneous recollection and citation. The drafting of the Acts also in many ways lends itself to misunderstanding and misinterpretation: in the construction of these Acts it is specially necessary to have regard not only to a particular section, but to the other qualifying provisions and the general scheme of this legislation.

In the present edition, we have incorporated the Prevention of Eviction Act, 1924, and the cases decided since the last edition. These cases are numerous, and many of them deal with matters of much importance, making it necessary in many instances largely to rewrite the old matter. Thus in the light of recent decisions we have largely recast our treatment of the statutory tenant and have amplified and amended our discussion of the problem as to what houses fall within this legislation. It is characteristic of the Acts that a matter of this sort should still be obscure and difficult on quite fundamental points.

We are painfully aware that the result of our efforts is not too easy of perusal, but it is hardly possible that a book on the subject-matter of this should consistently with the retention of any degree of practical utility be light reading. We have endeavoured, however, to state the effect of the Act in as clear and simple language as possible. Practically every case arising in connection with these statutes involves a number of points all calling for the nicest consideration of the language of different and sometimes conflicting sections of the Acts and making an annotated treatment of this legislation essential if real assistance is to be afforded. For this reason we have in this edition, as in former ones, given the statutes in annotated form, retaining the introductory sketch, which it is hoped will enable the reader to obtain a general idea of the subject, and to some extent serve as a supplementary index enabling him to refer to the fuller treatment of any particular topic later in the book. With a view to facilitating the task of turning up particular points we have endeavoured to make the general index one of some fullness and have made a liberal use of cross-references in the body of the book.

The earlier legislation on the subject which preceded the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, is even now sometimes required for reference and is given in an Appendix. It is believed that all the reported decisions to date are incorporated. Save in very exceptional cases it has not been considered desirable to include the decisions of inferior Courts here or in Scotland.

Our thanks are due to those who have made suggestions in connection with this edition. In all cases suggestions have received careful consideration, and, where feasible, have been adopted.

EDITORS OF "LAW NOTES."

July 24th, 1924.

CONTENTS.

PAGE

PREFACE iii

TABLE OF CASES vii

INTRODUCTION—

Origin and nature of the Acts 1
Policy and duration of the Acts 2
Properties within the Acts 3
Decontrol 5
Rent and protection of tenants 5
Alternative accommodation 8
The statutory tenancy 8
Permitted increases in rent 8
Conditions of increase of rent 10
Miscellaneous provisions 12
Effect of the Acts as against purchasers 12
Sub-tenants, lodgers and service occupation 13
Furnished dwelling-houses 13
Existing tenancies 14
Mortgages to which the Acts are applicable 14
Increasing mortgage interest 14
The standard rate of interest 14
Permitted increase of mortgage interest 15
Restriction on mortgagee's powers 15
Provisions as to Rating 16
Housing, Town Planning, &c. Acts 16
Courts having jurisdiction under the Acts 16
Administration of Justice Act, 1920 17
The position after June 24th, 1925 17
Summary of legislative changes since the Act of 1920 17

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 21

Sect. 1 21
,, 2 23
,, 3 30
,, 4 33
,, 5 37
,, 6 54
,, 7 55
,, 8 58
,, 9 60
,, 10 61
,, 11 62

INCREASE OF RENT AND MORTGAGE INTEREST, &c.—*contd.* PAGE
Sect. 12 63
,, 13 81
,, 14 82
,, 15 85
,, 16 88
,, 17 89
,, 18 90
,, 19 94
Schedule 1 96
,, 2 97
INCREASE OF RENT AND MORTGAGE INTEREST RESTRICTIONS (CONTINUANCE) ACT, 1923 98
RENT RESTRICTIONS (NOTICES OF INCREASE) ACT, 1923 99
Sect. 1 100
,, 2 105
,, 3 108
,, 4 110
Schedule 110
RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923 .....
Sect. 1 112
,, 2 112
,, 3 116
,, 4 117
,, 5 117
,, 6 118
,, 7 118
,, 8 121
,, 9 121
,, 10 122
,, 11 123
,, 12 123
,, 13 126
,, 14 126
,, 15 127
,, 16 128
,, 17 128
,, 18 128
,, 19 130
,, 20 130
PREVENTION OF EVICTION ACT, 1924 131
Sect. 1 131
,, 2 132
APPENDICES :—
REPEALED ACTS 135
RULES 151

INDEX 173

TABLE OF CASES.

PAGE

Abrahart *v.* Webster, (1924) W. N. 224; 157 L. T. Newspaper, 493; 40 T. L. R. 767 81

Adams *v.* Garrod (unreported), *Estates Gazette,* July 14th, 1923 89

Algate *v.* Vugler. *See* Lewis *v.* McKay.

Allen *v.* Inspector General R. I. C. (1920), 54 Ir. L. T. 119 ..... **66**

Artizans Dwellings Co. *v.* Whitaker, (1919) 2 K. B. 301; 88 L. J. (K. B.) 859; 121 L. T. R. 243; 35 T. L. R. 521; (1919) W. N. 165 .....37, 38, 39

Aston *v.* Smith, 157 L. T. Newspaper, 325; 59 L. J. 278; 68 S. J. 545; (1924) W. N. 166; 40 T. L. R. 576 .....85, 100

Atkin *v.* Rose, (1923) 1 Ch. 522; (1923) W. N. 58; 67 S. J. 350; 128 L. T. R. 653 53

Azulay *v.* Matthews, 157 T. L. R. 366 31

Baker *v.* Wood, (1920) W. N. 53; 89 L. J. (K. B.) 344; 84 J. P. 81; 64 S. J. 256; 36 T. L. R. 281; 122 L. T. R. 664 48

Barraclough *v.* Taylor (unreported), *Estates Gazette,* Jan. 27th, 1923 ... 67

Barrett *v.* Marshall (1920), 54 Ir. L. T. 214 .....41, 50

Barton *v.* Fincham (C. A.), (1921) 2 K. B. 291; (1921) W. N. 76; 90 L. J. (K. B.) 451; 124 L. T. R. 495; 65 S. J. 326; 37 T. L. R. 386; 85 J. P. 145 .....37, 38, 39, 87, 90

Bazalgette *v.* Hampson, (1920) W. N. 59; 122 L. T. R. 683; 84 J. P. 136; 36 T. L. R. 240; 89 L. J. (K. B.) 460 .....43, 44

Beavis *v.* Carman, 36 T. L. R. 396; (1920) W. N. 159; 84 J. P. 197 ... 38

Bell *v.* Steel, *Estates Gazette,* July 12th, 1924 59

Benabo *v.* Horseley, (1920) W. N. 209; 64 S. J. 727; 36 T. L. R. 859; 150 L. T. Newspaper, 110 95

Bensusan *v.* Bustard, (1920) 3 K. B. 654; 89 L. J. (K. B.) 1117; 64 S. J. 669; 36 T. L. R. 811; 150 L. T. Newspaper, 110; 124 L. T. R. 278 90

Berton *v.* Alliance Economic Investment Co., (1922) 1 K. B. 742; 91 L. J. (K. B.) 748; 127 L. T. R. 422; 38 T. L. R. 435; 66 S. J. 487; 127 T. L. R. 422 .....41, 53

Biddle *v.* Morris, (1924) W. N. 242; 59 L. J. 441; 158 L. T. Newspaper, 26 27

Blake *v.* Smith, (1921) 2 K. B. 685; (1921) W. N. 129; 125 L. T. R. 287; 90 L. J. (K. B.) 1140 .....16, 45, 87

Bond *v.* Pottle (unreported), *Times* Newspaper, Jan. 15th, 1921 47

Booth *v.* Mace, *Estates Gazette,* June 14th, 1924 22

Bourne *v.* Litton, (1924) 1 K. B. 231; (1923) W. N. 301; 93 L. J. (K. B.) 72; 68 S. J. 254; 58 L. J. 540; 156 L. T. 361; affirmed C. A., (1924) 2 K. B. 10; 59 L. J. 105; 40 T. L. R. 390; (1924) W. N. 118; 68 S. J. 343; 130 L. T. R. 186 .....27, 30, 32, 123

PAGE

Bradbury *v.* **Grimble & Co., Ltd.,** (1920) 2 Ch. 548; (1920) W. N. 313; 65 S. J. 61; 89 L. J. Ch. 645; 124 L. T. R. 189 86

Brakspeare & Sons, Ltd. *v.* Barton, (1924) 2 K. B. 88; 157 L. T. Newspaper, 325; 40 T. L. R. 607 .....22, 23, 29, 59, 64, 72

Brewer *v.* Jacobs, (1923) 1 K. B. 528; 92 L. J. (K. B.) 359; 67 S. J. 458; 128 L. T. R. 687 .....40, 52

Bridges *v.* Chambers, (1919) W. N. 34; 88 L. J. (K. B.) 500; 63 S. J. 319 31

Broomhall *v.* Property Owners and Agents, Ltd., (1922) 1 K. B. 311; (1921) W. N. 337; 38 T. L. R. 56; 66 S. J. 125; 126 L. T. R. 344 .....30, 74, 123

Burns *v.* Radcliffe, (1923) 2 Ir. R. 158 72

Burns-Wallace *v.* Hardingham (unreported). *See* Wilkes *v.* Goodwin, (1923) 2 K. B. 86 71

Bute *v.* Penderleith (1921), Sc. L. R. 290 47

Callaghan *v.* Bristowe, 89 L. J. (K. B.) 817; 123 L. T. R. 622; 84 J. P. 250; 36 T. L. R. 841; (1920) W. N. 308 .....70, 72

Calthorpe *v.* McOscar, (1923) 2 K. B. 573; C. A., (1924) 1 K. B. 716; 156 L. T. Newspaper, 461; 40 T. L. R. 223; 68 S. J. 367; 39 T. L. R. 527 129

Cardiff Corporation *v.* Crosta. *See* Cardiff Corporation *v.* Isaacs.

Cardiff Corporation *v.* Isaacs, Same *v.* Crosta, (1921) W. N. 165; 37 T. L. R. 649; 90 L. J. (K. B.) 1108; 125 L. T. R. 571; 125 T. L. R. 571 25

Chandler *v.* Smart (unreported), *Estates Gazette,* April 19th, 1924 118

Chapman *v.* Hughes, 39 T. L. R. 260; 67 S. J. 518; 129 L. T. R. 223. 39

Chartres *v.* Muldoon, 57 Ir. L. T. Rep. 102 40

Chiverton *v.* Ede, (1921) 2 K. B. 30; (1921) W. N. 36; 90 L. J. (K. B.) 491; 37 T. L. R. 242; 65 S. J. 260; 124 L. T. R. 765 .....44, 45

Clark *v.* Potter. *See* Lewis *v.* McKay.

Cohen *v.* Benjamin, 39 T. L. R. 10; 67 S. J. 147 72

Collis *v.* **Flower,** (1921) 1 K. B. 409; (1920) W. N. 377; 90 L. J. (K. B.) 282; 124 L. T. R. 510 .....67, 86

Colls *v.* Parnham, (1922) 1 K. B. 325; 152 L. T. Newspaper, 345; (1921) W. N. 358; 56 L. J. 466; 91 L. J. (K. B.) 335; 126 L. T. R. 480 73

Comyn *v.* **Leask** (1921), 55 Ir. L. T. Rep. 13 51

Connolly *v.* Whelan, 54 Ir. L. T. 18 90

Cooke Bros. *v.* Rogers (unreported), *Estates Gazette,* August 4th, 1923... 73

Cork Improved Dwellings Co. *v.* Barry, (1919) 2 Ir. R. 244 .....23, 25

Cottell *v.* Baker, (1920) W. N. 46; 64 S. J. 276; 36 T. L. R. 208 ...52, 68

Crane *v.* Cox, (1923) W. N. 41; 39 T. L. R. 204; 67 S. J. 335; 128 T. L. R. 831 71

Creamer *v.* Mitchell (C. A. unreported), *Estates Gazette,* April 21st, 1923; July 28th, 1923 .....22, 89

Crook *v.* Whitbread, 147 L. T. Newspaper, 80; 88 L. J. (K. B.) 959; 35 T. L. R. 522 39

PAGE

Cruise *v.* Terrell (C. A.), (1922) 1 K. B. 664; 38 T. L. R. 379; 126 T. L. R. 750; 91 L. J. (K. B.) 499; 66 S. J. 365 .....38, 44, 50, 85
Crutchley *v.* White, (1920) W. N. 218; 89 L. J. (K. B.) 815; 84 J. P. 145; 36 T. L. R. 249 44

Darrell *v.* Whitaker, (1923) W. N. 165; 92 L. J. (K. B.) 882; 129 L. T. R. 672; 67 S. J. 727; 39 T. L. R. 447; 155 L. T. Newspaper, 461 .....75, 80
Davies *v.* Bristow, Penrhos College, Ltd. *v.* Butler, (1920) 3 K. B. 428; (1920) W. N. 265; 90 L. J. (K. B.) 164; 123 L. T. R. 655; 36 T. L. R. 753 .....88, 89
Delano, The, (1895) P. 40 90
Dick *v.* Duncan, (1923) W. N. 90; 67 S. J. 384; 155 L. T. Newspaper, 210 71
Dick *v.* Jacques, 36 T. L. R. 773 .....52, 68
Diment *v.* Roberts, *Times Newspaper,* July 24th, 1924 121
Diprose *v.* Halford (unreported), *Estates Gazette,* Nov. 11th, 1922 ... 32
Dobson *v.* Richards, (1919) W. N. 166; 147 L. T. Newspaper, 146 ... 70
Dowling *v.* Butler (1920), 54 Ir. L. T. 199 .....44, 50
Dufty *v.* Palmer, (1924) 2 K. B. 35; (1924) W. N. 111; 157 L. T. 239; 59 L. J. 198 23
Dun Laoghaire Urban Council *v.* Moran, (1921) 2 Ir. R. 404; 156 Ir. L. T. 12 30
Dunn's Application, Re, 149 L. T. Newspaper, 215 76

Earle *v.* Bradley (unreported), *Estates Gazette,* October, 1921, p. 487... 73
Early (*or* Earley) *v.* Drummond, 39 T. L. R. 171; 67 S. J. 314; 155 L. T. Newspaper, 90; 58 L. J. 166 73
Ecclesiastical Commissioners *v.* Hilder, 36 T. L. R. 771; (1920) W. N. 268; 84 J. P. 309; 150 L. T. Newspaper, 39 48
Ellen *v.* Goldstein, (1920) W. N. 253; 88 L. J. Ch. 586; 123 L. T. R. 644 .....71, 73
Elliot *v.* Ellis (C. A.), (1923) 2 Ir. R. 45 32
Epsom Grand Stand *v.* Clarke (C. A.), 35 T. L. R. 525; 63 S. J. 642; (1919) W. N. 170 .....46, 70, 71, 72
Evans *v.* Enever, (1920) 2 K. B. 315; 89 L. J. (K. B.) 845; 123 L. T. R. 328; 64 S. J. 464; 36 T. L. R. 441 89

Felce *v.* Hill, (1923) W. N. 131; 39 T. L. R. 411; 129 L. T. R. 287; affirmed C. A., (1923) W. N. 235; 92 L. J. (K. B.) 974; 39 T. L. R. 673; 156 L. T. Newspaper, 81; 58 L. J. 355 .....22, 89, 120
Flannagan *v.* Shaw (C. A.), (1920) 3 K. B. 96; 89 L. J. (K. B.) 168; 122 L. T. 177; 84 J. P. 45; 64 S. J. 51; 36 T. L. R. 54 .. ....38, 39
Flint *v.* Ead, (1921) W. N. 182; 37 L. T. R. 708; 125 L. T. 857 44

Gardener *v.* Deptford Liberal Club (unreported), *Estates Gazette,* March 1st, 1924 73
Gilbert *v.* Jordan, (1920) W. N. 309; 84 J. P. 359 41
Gildea *v.* Conway, (1919) 53 Ir. L. T. 166 37

PAGE

Gill *v.* Luck (C. A.), (1923) W. N. 284; 93 L. J. (K. B.) 60; 40 T. L. R. 38; 68 S. J. 100; 156 L. T. Newspaper, 291 .....48, 90
Glasgow Corporation *v.* Mickel, (1922) S. C. 228 .....28, 29, 108
Glossop *v.* Ashley, (1921) 2 K. B. 451; (1921) W. N. 114; 65 S. J. 535; 37 T. L. R. 563; affirmed C. A., (1922) 1 K. B. 1; 65 S. J. 695; 37 T. L. R. 827; 125 T. L. R. 842 .....11, 21, 23, 65, 68, 69, 99
Goldsmith *v.* Arlidge (unreported), *Estates Gazette,* Feb. 16th, 1924 ... 32
Goldsmith *v.* Orr (C. A.), (1920) W. N. 250; 85 J. P. 1; 64 S. J. 615; 36 T. L. R. 731; 89 L. J. (K. B.) 901; 123 L. T. R. 614 ...22, 36, 64
Goodwin *v.* Rhodes, (1921) 2 K. B. 182; (1921) W. N. 44; 37 T. L. R. 315; 90 L. J. (K. B.) 533; 125 L. T. R. 182 45
Great Northern Rail. Co. *v.* Best (1921), 55 Ir. L. T. Rep. 57 47
Green-Price *v.* Webb, 89 L. J. (K. B.) 216; 112 L. T. 491; 84 J. P. 89; 64 S. J. 19; 148 L. T. Newspaper, 158 41
Greig *v.* Francis Campion & Co., 38 T. L. R. 519; 153 L. T. Newspaper, 357 .....70, 72
Hacker *v.* Grieg, *Estates Gazette,* June 24th, 1924 83
Harcourt *v.* Lowe, 35 T. L. R. 255 39
Hartell *v.* Blackler, (1920) 2 K. B. 161; 89 L. J. (K. B.) 838; 123 L. T. 171; (1920) W. N. 95 88
Hegan, Re, (1921) Ir. R. 189 70
Henderson *v.* Van Cooten, (1922) W. N. 340; 67 S. J. 228 52
Hewitt *v.* Rowlands (C. A.), (1924) W. N. 196; 157 L. T. Newspaper, 473; 59 L. J. 370 86
Hicks *v.* Scarsdale Brewery Co., (1924) W. N. 189; 157 L. T. Newspaper, 366 .....86, 119
Highfield *v.* Griffin (unreported) 29, 66
Hill *v.* Hasler, (1921) 3 K. B. 643; W. N. 276; 126 L. T. R. 126 .....23, 31
Hill, Re R. W., and Simmons, 150 L. T. Newspaper, 341; (1920) W. N. 386 57
Hipps, Ltd. *v.* Hughes (1919), 53 Ir. L. T. 111 37
Hocker *v.* Solomon, 91 L. J. Ch. 8; 127 L. T. R. 144 71
Hodson, Ex parte. *See* Rex *v.* Rodgers 42
Hollands *v.* Cooper, (1921) W. N. 298; 56 S. J. 395; 152 L. T. Newspaper, 293; 66 S. J. (W. R.) 10; 125 L. T. R. 850 .....35, 36, 55
Hunt *v.* Bliss, 36 T. L. R. 74; 89 L. J. (K. B.) 174; 122 L. T. 351; 84 J. P. 37; 64 S. J. 116 .....38, 41
Hurd *v.* Whaley, (1918) 1 K. B. 448; 118 L. T. 593; 34 T. L. R. 253... 52
Hutchinson's Trustee *v.* Downie (1923), Scots L. T. Rep. 49 55
Hutton *v.* Coombes (unreported), *Estates Gazette,* March 22nd, 1924 ... 73
Hylton, Lord *v.* Heal, (1921) 2 K. B. 438; (1921) W. N. 42; 65 S. J. 311; 90 L. J. (K. B.) 606; 125 L. T. R. 178; 37 T. L. R. 288...41, 52, 67

Irvine *v.* Nelson (1922), 56 Ir. L. T. Rep. 107 44
Isaacs *v.* Titlebaum, 64 S. J. 223; (1920) W. N. 29 64

PAGE

Jackson *v.* Harbour (unreported), *Estates Gazette,* April 5th, 1924 42

Jones *v.* Ramuz (unreported), *Estates Gazette,* Dec. 16th, 1922 80

Jones *v.* Woodward, 116 L. T. 378; 61 S. J. 283 76

Katsman *v.* Barnett (unreported), *Estates Gazette,* March 15th, 1924 ... 59

Keeves *v.* Dean (reported with Nunn *v.* Pellegrini), 39 T. L. R. 652; 67 S. J. 790; 155 L. T. Newspaper, 41; 58 L. J. 60; affirmed C. A., (1924) 1 K. B. 685; (1924) W. N. 6; 156 L. T. Newspaper, 481; 40 T. L. R. 211; 68 S. J. 321; 59 L. J. 6 .....46, 68, 85. 86, 87

Keiran *v.* Dunn, 54 Ir. L. T. 51 42

Kelly *v.* White, Penn Gaskell *v.* Roberts, (1920) W. N. 220 50

Kentish *v.* Sneath, 37 T. L. R. 586; 65 S. J. 455 45

Kerr and Others *v.* Bryde, (1923) A. C. 16; (1922) W. N. 304; 39 T. L. R. 61; 67 S. J. 112; 57 L. J. 385; 154 L. T. Newspaper, 353; 128 L. T. R. 140 .....11, 21, 99, 100, 101, 102, 104, 106, 108

Kimm *v.* Cohen, 40 T. L. R. 123; 156 L. T. Newspaper, 407; 68 S. J. 343 .....74, 83

Kimpson *v.* Markham, (1921) 2 K. B. 157; (1921) W. N. 55; 90 L. J. (K. B.) 393; 37 T. L. R. 342; 124 L. T. R. 790 .....39, 43

King *v.* Millen, (1922) 2 K. B. 247; 67 S. J. 48; 154 L. T. Newspaper, 150; 128 L. T. R. 280 71

King *v.* York, 88 L. J. (K. B.) 839; 35 T. L. R. 256; (1919) W. N. 59. 22

Kirk *v.* Cunnington, 37 T. L. R. 938; 125 L. T. R. 831 56

Laird *v.* Graves (1921), 55 Ir. L. T. Rep. 55 82

Landrigan *v.* Simmons, (1924) 1 K. B. 509; (1924) W. N. 10; 157 L. T. Newspaper, 27; 58 L. J. 21 102

Law Reporting Council, Re, 58 L. J. (Q. B.) 95; 22 Q. B. D. 279 73

Lawrie *v.* Woods, (1920) 2 Ir. R. 106 64

Lees *v.* Duley, (1921) W. N. 283 39

Lelyveld *v.* Peppercorn, (1924) W. N. 218; 40 T. L. R. 743; 59 L. J. 406; 157 L. T. Newspaper, 492 75

Lever Bros., Ltd. *v.* Caton, (1921) W. N. 190; 37 T. L. R. 664; 151 L. T. Newspaper, 384 47

Lewis *v.* McKay (reported with Algate *v.* Vugler and Clark *v.* Potter), 157 L. T. Newspaper, 325; 40 T. L. R. 579; 68 S. J. 739; 59 L. J. 459 121

Lewis *v.* Weston, *Estates Gazette,* July 5th, 1924 73

Logan *v.* Fair, (1922) S. C. 76 45

London County and Westminster Bank *v.* Tompkins (C. A.), (1918) 1 K. B. 515; 118 L. T. R. 610; 62 S. J. 330; 34 T. L. R. 259; 87 L. J. (K. B.) 662 .....56, 77

Lyon *v.* Morris, 19 Q. B. D. 139 .....74, 108

Mackworth *v.* Hellard, 37 T. L. R. 157; 124 L. T. R. 537; (C. A.), (1921) 2 K. B. 755; 37 T. L. R. 469; 90 L. J. (K. B.) 693; 85 J. P. 197; 125 L. T. R. 451 .....64, 79

Marchbank *v.* Campbell, (1923) 1 K. B. 245; (1922) W. N. 139; 67 S. J. 184; 128 L. T. R. 283; 39 T. L. R. 120; 92 L. J. (K. B.) 137 75

PAGE

Martin *v.* Watson, (1919) 2 Ir. R. 332 ..... 56, 67
Mason, Herring and Brooks *v.* Harris, (1921) 1 K. B. 653; (1921) W. N. 44; 37 T. L. R. 334; 125 L. T. R. 180; 90 L. J. (K. B.) 993 ..... 59, 87
Matthews *v.* Walker (unreported), *Estates Gazette,* April 10th, 1923.. 62
Meggeson *v.* Groves, (1917) 1 Ch. 158 103
McIlroy (William), Ltd. *v.* Clements, (1923) W. N. 149; 155 L. T. Newspaper, 363 86
McQuillan *v.* Clinton (1921), Ir. L. T. Rep. 143 82
Mellows *v.* Low, (1923) 1 K. B. 522; (1923) W. N. 31; 67 S. J. 261; 39 T. L. R. 190; 92 L. J. (K. B.) 363; 128 L. T. R. 667 ...67, 68, 86, 87
Messenger *v.* Hutton, (1921) W. N. 101; 37 T. L. R. 464 46
Michael *v.* Phillips, (1923) W. N. 30; 92 L. J. (K. B.) 356; 67 S. J. 385; affirmed C. A., (1924) 1 K. B. 16; (1923) W. N. 337; 93 L. J. (K. B.) 21; 68 S. J. 103; 130 L. T. R. 142; 155 L. T. Newspaper, 480 ..... 31, 71
Mitchell *v.* Townend & Co., (1921) 2 K. B. 91; (1921) W. N. 34; 124 L. T. R. 480; 85 J. P. 106; 90 L. J. (K. B.) 601; 37 T. L. R. 298 82
Murphy *v.* Porter (1919), 53 Ir. L. T. 151 52

Nadler *v.* Wilson, 157 L. T. Newspaper, 429; 40 T. L. R. 639; 68 S. J. 772 71
Narraway *v.* Bolster, *Estates Gazette,* July 19th, 1924 84
Nathan *v.* Hart (unreported), *Daily Telegraph,* June 5th, 1919 44
National Steam Car Co. *v.* Barham, 122 L. T. 315 ..... 47, 70
Necchi *v.* Cranchi (C. A.), 37 T. L. R. 934 82
Nevile *v.* Hardy, (1921) 1 Ch. 404; (1920) W. N. 374; 90 L. J. (Ch.) 158; 124 L. T. R. 327; 37 T. L. R. 129; 65 S. J. 135 .....39, 42, 43
Newell *v.* Crayford Cottage Society, (1922) 1 K. B. 656; 127 L. T. R. 11; 91 L. J. (K. B.) 626; 38 T. L. R. 355; 66 S. J. 472 .....21, 99
Nicholson *v.* Jackson (H. L.), (1921) W. N. 251; 65 S. J. 713; 37 T. L. R. 887; 90 L. J. (K. B.) 1121; 125 L. T. R. 802 .....25, 66
Northcott *v.* Roche, 37 T. L. R. 364 39
Nunn *v.* Pellegrini, 36 T. L. R. 652. *See* Keeves *v.* Dean.
Nye *v.* Davis, (1922) 2 K. B. 56; 91 L. J. (K. B.) 545; 126 L. T. R. 537 71

Oatway *v.* Munday (unreported), *Estates Gazette,* March 22nd, 1924 ... 73
O'Neill *v.* Duncan (1921), 55 Ir. L. T. Rep. 84 64

Parkinson *v.* Noel, (1923) 1 K. B. 117; (1922) W. N. 294; 67 S. J. 184; 92 L. J. (K. B.) 381; 128 L. T. 538 .....39, 67, 86
Peizer *v.* Federman, 38 T. L. R. 54; 56 L. J. 415; 66 S. J. 108; (1921) W. N. 320 31
Penfold and Thompson *v.* Newman, (1922) 1 K. B. 645; (1921) W. N. 350; 152 L. T. Newspaper, 363; 126 L. T. R. 697; 91 L. J. (K. B.) 528 .....29, 31, 32

PAGE

Penn Gaskell *v.* Roberts. *See* Kelly *v.* White 50
Penrhos College, Ltd. *v.* Butler. *See* Davies *v.* Bristow.
Phillips *v.* Barnett, (1921) 2 K. B. 799; (1921) W. N. 185; 37 T. L. R. 687; affirmed C. A., (1922) 1 K. B. 223; 91 L. J. (K. B.) 198; 38 T. L. R. 39; 152 L. T. Newspaper, 325; 66 S. J. 124 .....75, 78
Pond *v.* Barber (unreported), *Estates Gazette,* June 9th, 1923 64
Poplar Union Assessment Committee *v.* Roberts, (1922) 2 A. C. 93; 91 L. J. (K. B.) 491; 127 L. T. R. 99; 38 T. L. R. 499; 66 S. J. 386. 25
Precious *v.* Reedie, 157 L. T. Newspaper, 239; (1924) W. N. 159; 59 L. J. 239; 40 T. L. R. 578 104
Price *v.* Pritchard, 89 L. J. (K. B.) 162; 122 L. T. R. 488; 48 J. P. 49; 35 T. L. R. 672 37
Proudfoot *v.* Hart, 25 Q. B. D. 42 129
Prout *v.* Hunter, 157 L. T. Newspaper, 302; 40 T. L. R. 545; 59 L. J. 282; 68 S. J. 545; 88 J. P. 256; (1924) W. N. 153 .....69, 70, 78
Provident Association of London and Gollogally's Contract, (1917) 1 Ir. R. 240 .....57, 63
Purves *v.* Graham, (1924) S. C. 477 90

Queen's Club Garden Estates, Ltd. *v.* Bignell, (1924) 1 K. B. 117; 39 T. L. R. 496; 93 L. J. (K. B.) 107; 130 L. T. Newspaper, 26 ... 104

R. *v.* Judge of Marylebone County Court, (1923) 1 K. B. 365; (1923) W. N. 22; 67 S. J. 299; 39 T. L. R. 169; 92 L. J. (K. B.) 367; 128 L. T. 364 .....30, 74
R. *v.* Scully. *See* R. *v.* Judge of Marylebone County Court.
Raikes *v.* Ogle, (1921) 1 K. B. 576; (1921) W. N. 27; 37 T. L. R. 261; 90 L. J. (K. B.) 588; 125 L. T. R. 352 22
Rawlinson *v.* Alger, (1921) W. N. 90; 90 L. J. (K. B.) 497; 124 L. T. R. 512 95
Read *v.* Goater, (1921) 1 K. B. 611; (1921) W. N. 19; 90 L. J. (K. B.) 580; 125 L. T. R. 87 .....73, 82
Reeks *v.* Shelley, 36 T. L. R. 868 40
Rees *v.* Marquis of Bute, (1916) 2 Ch. 64; 114 L. T. R. 1029; 60 S. J. 528; 32 T. L. R. 425 59
Reeves *v.* Davies (C. A.), (1921) 2 K. B. 486; (1921) W. N. 97; 37 T. L. R. 431; 90 L. J. (K. B.) 675; 125 L. T. R. 354 .....39, 67, 86
Remmington *v.* Larchin (C. A.), (1921) 3 K. B. 404; (1921) W. N. 222; 37 T. L. R. 839; 65 S. J. 662; 125 L. T. R. 749 .....59, 87
Remon *v.* City of London Real Property Co. (C. A.), (1921) 1 K. B. 49; (1920) W. N. 318; 89 L. J. (K. B.) 1105; 123 L. T. R. 67; 36 T. L. R. 869 .....67, 70, 85, 87
Reuben *v.* Larsen (unreported) 59
Rex *v.* Rodgers or Rogers, Ex parte Hodson, (1918) W. N. 128; 118 L. T. R. 718; 82 J. P. 144 42
Reynolds *v.* Bannerman, (1922) 1 K. B. 719; 91 L. J. (K. B.) 651; 127 L. T. R. 300; 38 T. L. R. 509; 66 S. J. 504 .....44, 52

PAGE

Richmond, Duke of, and Gordon *v.* Dewar and Cadogan Hotel Co., Ltd., 38 T. L. R. 151 ..... 73, 82
Rider *v.* Ford, (1923) 1 Ch. 541; (1923) W. N. 91; 67 S. J. 484; 129 L. T. R. 347 86
Rider *v.* Rollit, 36 T. L. R. 687; (1920) W. N. 227; 84 J. P. 267 69
Rimmer *v.* Carson, 39 T. L. R. 349; 155 L. T. Newspaper, 256 71
Roberts *v.* Collyer (unreported), *Estates Gazette,* Feb. 3rd, 1923 82

Salter *v.* Lask, (1923) 2 K. B. 798; 155 L. T. Newspaper, 503; (C. A.), (1924) 1 K. B. 754; 68 S. J. 420; 156 L. T. Newspaper, 337 ..... 37, 44, 73, 90
Sammon *v.* Cawley (1919), 53 Ir. L. T. 224 37
Sanderson *v.* Gibbons (unreported), *Estates Gazette,* April 19th, 1924 ... 73
Santley *v.* Wilde, (1899) 2 Ch. 474 77
Savory *v.* Bayley, 38 T. L. R. 619 103
Schmit *v.* Christy, (1922) 2 K. B. 60; 91 L. J. (K. B.) 629; 38 T. L. R. 627; 66 S. J. 539; 127 L. T. R. 305 ..... 30, 31, 115, 116
Scott *v.* Austin, 89 L. J. (K. B.) 1048; 125 L. T. R. 235 73
Sharp Bros. and Knight *v.* Chant (C. A.), (1917) 1 K. B. 771; 89 L. J. (K. B.) 608; 116 L. T. R. 185; 61 S. J. 352; 38 T. L. R. 235 ..... 59, 83
Shrimpton *v.* Rabbits, 157 L. T. Newspaper, 301; 68 S. J. 685; 40 T. L. R. 541 ..... 42, 47
Shuter *v.* Hersh, (1922) 1 K. B. 438; (1921) W. N. 339; 152 L. T. Newspaper, 363; 91 L. J. (K. B.) 263; 38 T. L. R. 127; 66 S. J. 158; 126 L. T. R. 346 ..... 22, 85, 89, 120
Sidebotham *v.* Holland, (1895) 1 Q. B. 378 103
Simmons *v.* Crossley, (1922) 2 K. B. 95; 127 L. T. R. 337; 91 L. J. (K. B.) 643; 38 T. L. R. 571; 66 S. J. 524 104
Simpson *v.* Zubrasky (C. A. unreported), *Estates Gazette,* July 22nd and Dec. 16th, 1922 75
Sinclair *v.* Powell (C. A.), (1922) 1 K. B. 393; (1921) W. N. 9; 66 S. J. 235; 91 L. J. (K. B.) 220; 126 L. T. R. 210 ..... 36, 75, 76
Sloane *v.* Cooke (1919), 53 Ir. L. T. 209 37
Smith *v.* Barclay (1920), 1 Scots L. T. 13 37
Smith *v.* Barnett (unreported), *Estates Gazette,* March 29th, 1924 73
Smith *v.* Bridgen, (1920) W. N. 106; 84 J. P. 101; 64 S. J. 376; 36 T. L. R. 360 47
Smith *v.* Lloyd, (1923) W. N. 197; 92 L. J. (K. B.) 877; 67 S. J. 810; 58 L. J. 280; 155 L. T. 525; 130 L. T. R. 20 ..... 22, 100
Smith *v.* Primavesi, (1921) W. N. 291 48
Smith *v.* Prime, (1923) W. N. 131; 39 T. L. R. 403; 67 S. J. 557; 129 L. T. R. 441 80
Spencer *v.* Fox, (1922) W. N. 141; 91 L. J. (K. B.) 929; 127 L. T. R. 365 42
Squier *v.* Hore, (1921) W. N. 313; 66 S. J. 15; 38 T. L. R. 38 45

PAGE

Steeds *v.* Steeds, 22 Q. B. D. 557 34
Steel *v.* Mahoney, 62 S. J. 488; 34 T. L. R. 327; (1918) W. N. 253...25, 31
Stephens *v.* Tatham, (1919) W. N. 334; 83 J. P. 367 37
Stephenson *v.* Edwards (unreported) 90
Stirk and Sons, Ltd. *v.* Halifax Assessment Committee, (1922) 1 K. B. 264; 91 L. J. (K. B.) 429; 126 L. T. R. 338; 38 T. L. R. 83; 66 S. J. 236 25
Stockham *v.* Easton, (1924) 1 K. B. 52; 39 T. L. R. 472; 129 L. T. R. 762; 92 L. J. (K. B.) 926 75
Stovin *v.* Fairbrass, 147 L. T. Newspaper, 210; C. A., 88 L. J. (K. B.) 1004; 121 L. T. R. 172; 83 J. P. 241; 63 S. J. 682; 37 T. L. R. 659. 37
Strathern *v.* Beaton, 59 Sc. L. R. 559 59
Strickland *v.* Palmer, 40 T. L. R. 314; (1924) W. N. 68; 157 L. T. R. 127; 59 L. J. 121; C. A., 68 S. J. 665; 157 L. T. Newspaper, 448; 59 L. J. 335; 40 T. L. R. 649 .....26, 30, 33, 74, 108, 120
Sutton *v.* Begley, (1923) 2 K. B. 694 75
Sutton, W. H., and Sons *v.* Hollerton (C. A.), (1918) W. N. 237; 145 L. T. Newspaper, 256 .....25, 32

Tarrant *v.* Burston (unreported), *Estates Gazette,* May 3rd, 1924 65
Taylor *v.* Faires, (1920) W. N. 349; 90 L. J. (K. B.) 391; 124 L. T. R. 732; 65 S. J. 116; 37 T. L. R. 55 .....51, 67
Tod-Heatly *v.* Benham, 40 Ch. D. 80 40
Tompkins *v.* Rogers, (1921) 2 K. B. 94; (1921) W. N. 35; 124 L. T. R. 478; 85 J. P. 113; 37 T. L. R. 299; 90 L. J. (K. B.) 591 73
Town Properties Development Co. *v.* Winter, 37 T. L. R. 979 89
Townsend *v.* Charlton, (1922) 1 K. B. 700; 91 L. J. (K. B.) 714; 127 L. T. R. 96; 38 T. L. R. 397; 66 S. J. 389 54
Truss *v.* Olivier, 40 T. L. R. 588; 157 L. T. Newspaper, 344 .....61, 121

Upjohn *v.* Macfarlane, (1922) 2 Ch. 256; 91 L. J. (Ch.) 465; 127 L. T. R. 210 38
Urwickee *v.* Gutkin (1921), 55 Ir. L. T. Rep. 39 38

Valentine *v.* Corbatti (unreported), *Estates Gazette,* April 5th, 1924 ... 74
Veale *v.* Cabezas, 152 L. T. Newspaper, 326; (1921) W. N. 311 ...64, 79
Vernon Investment Association *v.* Welch, 35 T. L. R. 511; 64 S. J. 643. 38

Wall *v.* Gibbs, (1920) W. N. 187 42
Waller & Son *v.* Thomas, (1921) 1 K. B. 541; (1921) W. N. 19; 37 T. L. R. 325; 125 L. T. R. 21; 90 L. J. (K. B.) 656 ...41, 66, 71, 72, 79
Walters *v.* White, 33 T. L. R. 154; 116 L. T. R. 377; 61 S. J. 253...55, 58
Ward *v.* Larkins, (1923) W. N. 189; 67 S. J. 657; 130 L. T. R. 184; 58 L. J. 265 .....53, 88

PAGE

Wedgwood *v.* Heddersley (unreported), *Estates Gazette,* May 5th, 1923. 74, 83

Welby *v.* Parker (C. A.), (1916) 2 Ch. 1; 84 L. J. (Ch.) 564; 114 L. T. R. 876; 60 S. J. 417; 32 T. L. R. 403 56

Wellesley *v.* White, (1921) 2 K. B. 204; (1921) W. N. 42; 90 L. J. (K. B.) 926; 125 L. T. R. 92 .....51, 73

Weston *v.* Fidler, 47 S. J. 567; 88 L. T. R. 769; 67 J. P. 208 104

West *v.* Wrotham U.D.C. (unreported), *Estates Gazette,* Oct. 20th, 1923. 73

Westminster and General Properties and Investment Co. *v.* Simmons, 35 T. L. R. 669; (1919) W. N. 241 64

Wilcock *v.* Booth, 89 L. J. (K. B.) 864; 122 L. T. R. 678; 84 J. P. 76; 64 S. J. 292; 36 T. L. R. 213 .....43, 44

Wilkes *v.* Goodwin (C. A.), (1923) W. N. 88; (1923) 2 K. B. 86; 67 S. J. 437; 92 L. J. (K. B.) 580; 39 T. L. R. 262; 129 L. T. R. 44. 71

Williams *v.* Britannic Merthyr Steam Coal Co., 157 L. T. Newspaper, 476; 59 L. J. Newspaper, 372; (1924) W. N. 223; 40 T. L. R. 687; 68 S. J. 795 .....118, 121

Williams *v.* Perry, (1924) 1 K. B. 936; (1924) W. N. 136; 40 T. L. R. 539; (1923), 92 L. J. (K. B.) 521; 59 L. J. 221; 157 L. T. Newspaper, 283 .....73, 78

Williamson *v.* Pallant, (1924) W. N. 144; 59 L. J. 221; 157 L. T. Newspaper, 302; 68 S. J. 617 .....38, 42, 47, 50

Wolf *v.* Smith, (1923) 2 Ch. 293; (1923) W. N. 229; 156 L. T. Newspaper, 26; 67 S. J. 766; 92 L. J. (Ch.) 635; 130 L. T. R. 154 ... 90

Wood *v.* Carwardine, (1923) 2 K. B. 185; 39 T. L. R. 300; 129 L. T. R. 314 71

Wood *v.* Cooper, (1894) 3 Ch. 671 40

Wood (L. M.) & Co., Ltd. *v.* City and West End Properties, Ltd., 38 T. L. R. 98 .....64, 71

Wood *v.* Wallace, 90 L. J. (K. B.) 319; 124 L. T. R. 539; 65 S. J. 135; 37 T. L. R. 147 .....70, 71

Woodhead *v.* Putnam, (1923) 1 K. B. 252; (1922) W. N. 340; 128 L. T. R. 281; 67 S. J. 228; 39 T. L. R. 120; 92 L. J. (K. B.) 137... 75, 76

Woodifield *v.* Bond (No. 1), (1921) W. N. 309; 152 L. T. Newspaper, 310; 66 S. J. (W. R.) 14; 127 L. T. R. 204 .....56, 70, 72

Woodifield *v.* Bond (No. 2), (1922) 2 Ch. 40; 91 L. J. (Ch.) 561; 127 L. T. R. 205; 38 T. L. R. 494; 66 S. J. 406 55

Woodward *v.* Samuels, (1920) W. N. 82; 122 L. T. R. 681; 84 J. P. 105; 89 L. J. (K. B.) 689; 149 L. T. Newspaper, 177 .....74, 81

Wortley *v.* Mann, (1916) W. N. 390 31

Wright and Thompson, Re, (1920) 1 Ch. 191; 89 L. J. (Ch.) 66; 122 L. T. R. 92; 64 S. J. 52; 36 T. L. R. 37 63

X Rays, Ltd. *v.* Armitage, 66 S. J. 351; (1922) W. N. 27 .....28, 108

INTRODUCTORY SKETCH OF THE ACTS.

(*The Section references are to the principal Act unless otherwise indicated.*)

Origin and Nature of the Acts.

The circumstances which have led to this legislation are too well known to require discussion. The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by subsequent Acts, constituted an attempt to deal with the problems involved, and these earlier Acts (see Appendix I.) were repealed and replaced by the Act of 1920, which had a much wider scope, dealt with many properties not included in the parent provisions, and introduced innovations of a radical nature. Decisions on the old Acts will frequently be of assistance in interpreting the Act and its subsequent amendments, but must be applied with caution.

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, conveniently known as the principal Act, was passed on July 2nd, 1920, and was originally only in force until the 24th June, 1923, except as regards business premises, the provisions as to which expired on the 24th June, 1921. By the Rent Restrictions (Notices of Increase) Act, 1923, amendment was made in respect of an isolated point, and, finally, the Rent and Mortgage Interest Restrictions Act, 1923, prolonged the duration of the principal Act till June 24th, 1925, introduced a considerable number of alterations and contained special provisions of its own which are to operate till June 24th, 1930, unless in certain specified con-

ditions they expire earlier. The Prevention of Eviction Act, 1924, further amended the principal Act. These four Acts, which may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924, constitute the existing body of legislation restricting the increase of rent and mortgage interest. The Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, was of purely temporary character, extending the operation of the principal Act to July 31st, 1923, pending the further continuance of that Act as above mentioned. For a summary of statutory changes since the Act of 1920, see *post*, p. 17.

Policy and Duration of the Acts.

The general policy of the Acts is to confer security of tenure on the tenants of premises below specified limits of value. Tenants are absolutely protected against increase of rent beyond certain permitted limits. Throughout it is important to bear in mind that the Acts are restriction Acts—their policy is to fetter the powers that the lessor would otherwise have as to increasing rent and other matters without themselves conferring any powers on him. Thus the Acts give no power to the landlord to transfer any liability to the tenant as to rates or repairs (*post*, p. 29), nor in strictness do they confer any power on him to raise rent. The remarks as to this, *post*, p. 10, should be carefully noted. The Acts confer no power of ejectment. The tenant cannot ever be ejected unless power exists independently of the Acts, and then only within a specified range of circumstances, and even in those cases the Court has a discretion as to granting ejectment. Thus if the tenant fails to pay any rent at all the landlord is not necessarily entitled to eject or to distrain, distress in the case of tenancies where the Act is applicable being made impossible unless by leave of the County Court.

As to mortgages falling within the Act, just as the landlord is prevented from indefinite increase of his tenant's burdens, so is the landlord's own mortgagee prevented from increasing the rate of interest beyond specified limits and from enforcing his security.

This will be the position till June 24th, 1925. After that date the tenant and mortgagor will, however, enjoy the modified protection afforded by Part II. of the Rent and Mortgage Interest Restrictions Act, 1923 (*post*, pp. 17, 123), till June 24th, 1930, unless, in virtue of a resolution of both Houses, those provisions expire at an earlier date.

Properties within the Acts.

The Acts extend to England and Scotland; only the principal Act applies to Ireland. The Acts apply to the houses specified in sect. 12 (2).

Roughly they apply to a house, or part of a house, let as a separate dwelling where either the standard rent (usually that of August 4th, 1914) (see *post*, p. 63) or the rateable value does not exceed 105*l*. for London, 90*l*. for Scotch, and 78*l*. for other houses.

The criterion, it should be noted, is a double one—if either rent or rateable value do not exceed these figures the Acts apply.

For purposes of the Acts "house" may include a flat or even a single room if let as a dwelling. The Acts no longer apply to business premises as such, sect. 13 of the principal Act now having lapsed. It must, however, be remembered in construing the Acts that premises may fall within the provisions as to "dwelling-houses," though part thereof is used for business purposes (sect. 12 (2), *post*, p. 71). A shop used by the tenant also as a residence, *e.g.*, will usually be within the Act.

But there are the following exceptions and qualifications:—

(1) The Acts do not apply to houses *bonâ fide* let at a rent which includes payments in respect of board, attendance, or use of furniture, provided that the proportion of the rent fairly attributable to the attendance or use of furniture is a substantial part of the whole rent. This proviso is in virtue of the amending Rent and Mortgage Interest Restrictions Act, 1923,

s. 10, under which the inclusion of a little linoleum in the letting can no longer oust the Acts. It has been decided, however (*Prout* v. *Hunter*, *post*, p. 70), though the decision is difficult to reconcile with s. 12 (6), that whether the premises are let furnished or not is to be tested by the position of the occupying tenant, and that a house let unfurnished is taken out of the Act by a furnished sublet. But while the general provisions of the Acts do not apply, there are certain special provisions as to furnished lets (*post*, p. 13).

(2) The Acts do not apply to houses where land is included in the letting the rateable value of which is not less than one-quarter that of the house or premises (*post*, p. 69).

(3) Where the rent is less than two-thirds the rateable value the Acts will not apply till there is a letting at a higher rent (*post*, p. 79).

(4) The Acts do not apply to new houses or premises erected after or in course of erection on April 2nd, 1919 (sect. 12 (9), *post*, p. 80).

(5) Or, with a similar limitation as to date, to converted flats (sect. 12 (9), *post*, p. 80).

(6) Decontrolled houses cease to be within the Acts (see *infra*, next para.).

(7) The Acts do not apply to premises expressly let for business purposes even if formerly let for residence (*Williams* v. *Perry*, *post*, p. 73).

Generally, it must be remembered that property once within the Acts is always within the Acts (*post*, p. 78). But this principle is subject to so many exceptions as to be largely inoperative. Thus it does not apply to cases (5), (6) and (7) just mentioned, while a reconstruction not falling within sect. 12 (9) may yet be sufficient to make a house or flat a new one for the purpose of attracting a fresh standard rent on the first occasion of letting after the reconstruction (*post*, p. 75).

Decontrol.

Houses originally within the Acts may become decontrolled in virtue of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2. These cases will be found discussed, *post*, p. 114. In some cases where a house has been decontrolled it may be recontrolled and brought again within the Acts (*post*, p. 53).

Rent and Protection of Tenants.

As in the original Acts, a standard rent is taken, *i.e.*, the rent on August 3rd, 1914, or if the premises were not then let, the last rent they were let at before that date. As to premises never let till after August 3rd, 1914, then the rent at which they were first let. Where the rent is "progressive," the maximum rent is the standard rent (sect. 12, sub-sect. 1 (a) of the principal Act). In some cases the standard rent will have to be ascertained by a process of apportionment (see *post*, p. 74). For other special cases, see *post*, p. 63.

Subject to certain exceptions, any increase of rent after March 25th, 1920, which exceeds the standard rent by more than the specified permitted limits, is unenforceable by the landlord. This will be so even though there has been a change of tenants—the landlord cannot unduly (even if he can at all: see *Schmit* v. *Christy*, *post*, p. 30) increase the rent even on letting to a new tenant. The standard rent is fixed for the house, not for the particular tenancy (*post*, p. 22).

Security to the tenant against any increase in cases where the Act applies is afforded by the following methods:—

(1) By express enactment (sect. 1) that the increase is irrecoverable by the landlord, and if paid by tenant may be recovered by him (sect. 14. See also sect. 19 (3)). This is now subject to a time limit: see the Rent and Mortgage Interest Restrictions Act, 1923, s. 8 (*post*, p. 121).

(2) Distress is forbidden except by leave of the Court (sect. 6).

(3) The tenant holding over is expressly confirmed in a statutory tenancy so that he cannot be ejected without legal proceedings (sect. 15, *post*, p. 85).

(4) By the provisions of sect. 5 of the principal Act—or rather that section in the form substituted for the original form by the Rent and Mortgage Interest Restrictions Act, 1923, and the Prevention of Eviction Act, 1924. Sect. 5 in its existing shape will be found on p. 37 *et seq.* It reproduces the original section with considerable amendment. The result is that in *no* case is the Court bound to give judgment for possession against the tenant, and cannot grant ejectment at all except on the grounds mentioned below, and even in these cases only if it considers it reasonable, *e.g.*, the Court *need* not grant ejectment against a tenant even if his rent is in arrear. It is impossible to contract out of the Act (*post*, p. 37), for these provisions deprive the Court of jurisdiction to order ejectment unless it is reasonable to do so and the case falls within one of the following heads:—

(a) The tenant is in default in payment of rent or fulfilment of the other obligations of his tenancy (*post*, p. 39).

(b) Nuisance or annoyance to adjoining occupiers by the tenant or person residing with him, or conviction of the tenant or person residing with him for immoral or for illegal use, or where the tenant or person residing with him commits waste, &c. (*post*, p. 40). Under the Rent and Mortgage Interest Restrictions Act, 1923, it suffices that the nuisance, improper user, waste, &c. was on the part of a lodger or sub-tenant, unless the tenant has taken reasonable steps to get rid of the lodger or sub-tenant.

(c) The landlord has sold, relet, &c., after the tenant himself has given notice to quit (*post*, p. 41).

(d) The dwelling-house is reasonably required by

the landlord as a residence (A) for himself or for his son or daughter over eighteen, or (B) for any person *bonâ fide* residing with the landlord or his or his tenant's whole time employee (actually or prospectively on housing accommodation being obtained). But in (B) alternative accommodation (*post*, p. 42) must be shown unless (1) the house was let to an employee as such and the employment has ceased (*post*, p. 47), or (2) the house is required in specified circumstances for agricultural labourers (*post*, p. 48), or (3) the landlord gave up occupation in consequence of military service (*post*, p. 48). In (A), *i.e.*, if the house is reasonably wanted by the landlord for himself or for a son or daughter over eighteen, alternative accommodation must be shown where the landlord became so by purchasing after May 5th, 1924, unless the case falls within heads (1) and (3) just given under (B). In cases where the landlord requires the house for his own occupation or that of a son or daughter over eighteen, but did not become landlord by purchasing after May 5th, 1924, alternative accommodation need not be shown if the Court is satisfied it would be greater hardship to refuse than to make the order, but even here though alternative accommodation is not absolutely essential, the Court is expressly required to take into account, in considering the question of greater hardship, whether alternative accommodation exists not only for the tenant but for the landlord. (Sect. 5 (1) (d) and concluding proviso (iv) of that sub-section introduced by the Prevention of Eviction Act, 1924, *post*, pp. 41, 49, where also the meaning of "become the landlord" is discussed.)

(e) The premises are required for the purpose of a local or statutory authority or for a purpose of public interest and there is alternative accommodation (*post*, p. 45).

(f) The landlord became so after military service, requires the house for personal occupation, and offers

the tenant sufficient accommodation in the same house (*post*, p. 45).

(g) The house is required for a former tenant who vacated it for military service (*post*, p. 45).

(h) The tenant has after July 31st, 1923, assigned or sublet the whole house without the landlord's consent—this whether there is a covenant against assigning or underletting or not (*post*, p. 46). The position is the same where part of the house being already sublet the tenant sublets the rest without consent.

(i) The house is licensed premises and the tenant has committed a licensing offence or has been guilty of certain faults in the conduct of the business or the licence has for any reason been refused (*post*, p. 46).

The receipt of rent from a statutory tenant will not prejudice the landlord's claim to possession, even where it exceeds the amount due in respect of the three months from notice to quit mentioned in sect. 16 (3) (see *post*, p. 88).

Alternative Accommodation.

Under sect. 5 as amended alternative accommodation differs considerably from that required by the section in its original form (*post*, p. 42). The result of the Prevention of Eviction Act, 1924, is to make alternative accommodation a more frequent factor than it previously was.

The Statutory Tenancy.

A tenant remaining in possession after the tenancy has expired in virtue of the above protection is usually and conveniently described as a statutory tenant. His position is dealt with in sect. 15 (*post*, p. 85). A statutory tenant cannot assign and it is doubtful whether he can sublet (*post*, p. 86). As to whether notice by the landlord is needed to determine the tenancy, see *post*, p. 85.

Permitted Increases in Rent.

Subject to the conditions to be next mentioned, the landlord is not restricted to the standard rent, but the rent may be

increased in excess of the standard rent by the additions following:—

(1) A percentage on the landlord's expenditure on improvements or structural alterations as distinct from repairs. The rate is 6 per cent. on expenditure incurred before the 2nd July, 1920, and 8 per cent. on expenditure after (*post*, p. 24).

(2) An amount corresponding to the increase in rates in cases where the landlord pays these. As to the carrying of an increase in rates into the next rating period, and as to the result where rates after rising subsequently go down, see *post*, pp. 32, 26.

(3) A percentage on the "net rent" as defined by sect. 12 (1) (c) (*post*, pp. 26, 66).

The method of calculating the percentage is a little complicated. First the landlord is given a sort of bonus of 15 per cent. (as regards houses within the previous Acts he only got the benefit of this to the extent of 5 per cent. for the first year from the passing of the principal Act, viz., 2nd July, 1920). Then in addition, to cover expenditure on repairs, the landlord gets a further percentage of 25 per cent. where the landlord does the repairs, or if the tenant has agreed to do part of the repairs, such lower percentage as may be determined by agreement or by the County Court.

This percentage therefore works out, where the landlord is solely responsible for repairs, at 40 per cent. on the net rent. If the house was already within the previous Acts, the rate was restricted to 30 per cent. till after a year from the 2nd July, 1920. Where the tenant is under express liability for part of the repairs, this must be taken into account in reduction of the percentage in manner pointed out by the Acts, so that it will be necessary before giving notice of increase in respect of repairs to settle the amount by agreement or reference to the County Court. (*Bourne* v. *Litton*, *post*, p. 27.) It is important to note these percentages are not calculated on the actual rent paid by the tenant, or even on the standard rent, but on the "net rent" as defined (*post*, p. 66). It must be remembered also that the landlord is for

the purpose of these calculations deemed to be liable for repairs for which the tenant is not under express liability (sect. 2 (5)) —"deemed to be," the Act does not make him so liable in fact where the rent is below the standard rent. The Acts apparently confer no power to increase an existing rent up to the standard rent and then add the permitted increase. (*Dufty* v. *Palmer, post,* p. 23.)

A special power of increasing rent is given to railway companies by sect. 2 (1) (e) (*post,* p. 27).

In addition to these increases authorised by the principal Act, the Rent and Mortgage Interest Restrictions Act, 1923, authorises further increases in cases where *part* of the house is sublet. Thus if the tenant sublets a room he can exact a further 10 per cent. on the net rent of that room, though half of this amount can be added by his own superior landlord to his own rent (see *post,* p. 118). In certain circumstances an increase validly made will cease to operate (*post,* pp. 28, 117).

Conditions of Increase of Rent.

Before dealing with this matter more in detail, one thing is desirable to make clear at the outset. To talk of the landlord "raising the rent" (or the mortgagee "raising the interest") is to employ a convenient phrase. But it is a phrase that may mislead unless it is carefully understood that while the Acts restrict the possibility of an increase in rent or interest, they do not in terms give the landlord (or mortgagee) any power of increase he does not possess apart from the Acts, and only within narrow limits impliedly confer any power of increase. Now, apart from the Acts, a landlord could not during an existing tenancy increase the rent by simply giving notice to the tenant that the rent is increased. The tenant would not be liable unless he agreed to pay a higher rent, and if he did not assent to the increase, the landlord's notice raising the rent would be legally quite ineffective. And even now under the Acts all that the landlord can do is to bring pressure to bear on the tenant by giving him proper notice to quit, and the effect of the Acts is to prevent even this from being effective pressure

except to a modified extent. That is to say, if apart from the Acts the landlord would be in a position to turn out the tenant, the Acts will usually prevent this if the tenant continues to pay his rent with the addition (if certain conditions are fulfilled) of the increases specified in the Acts, and it may possibly in some cases prevent it even if the tenant pays no rent. If the tenant elect to take advantage of the Acts and stay on thereunder, he is under a liability to pay the increased rate and personally liable therefor (*post*, p. 23). It is only in this sense that there is any power of increase conferred by the Acts, and in no case can there be any question of an increase until any existing tenancy has determined. This is a "basic rule" (per McCardie, J., *Glossop* v. *Ashley*, (1921) 2 K. B. 451), which, implicit in the earlier Acts, is now expressly recognised by sect. 3 (1) of the principal Act and judicially affirmed in *Kerr* v. *Bryde*, (1923) A. C. 16. To take a simple illustration: if the tenant have a lease expiring at Michaelmas, 1924, it is impossible to increase the rent till that date without the tenant's consent. Similarly, in the case of a weekly tenant, it is impossible for an increase to take effect till notice that the tenancy has been terminated. It was the failure to realise this which led to the need for the Rent Restrictions (Notices of Increase) Act, 1923, making the statutory notice of increase in itself equivalent to notice to quit. See for a full account of this Act, the Introductory Note thereto, *post*, p. 99.

It remains to notice the conditions which must be fulfilled before even the permitted increases are possible. The first is that no increase is possible in derogation of the tenant's rights under any existing tenancy (sect. 3 (1), see *post*, pp. 21, 22, 30): any existing tenancy must have first determined. This may, of course, involve the giving of a notice to quit, but not necessarily so—no notice to quit is needed where the tenancy has expired and the tenant holds over as statutory tenant (*post*, p. 22). That the statutory notice of increase may operate in itself as notice to quit has already been mentioned. The second condition is that the statutory notice of increase has been given in accordance with the Act

(sect. 3 (2), *post*, p. 30). This second condition need not be fulfilled (though the first one must be) as to the new increases authorised by the Rent and Mortgage Interest Restrictions Act, 1923, where the premises are partially sublet (*post*, p. 120), and once a valid statutory notice has been given it is unnecessary to repeat it—even on the occasion of a letting to a new tenant (*post*, p. 31). A slight though important change in the form of the notice is made by sect. 6 (2) of the Rent and Mortgage Interest Restrictions Act, 1923 (*post*, p. 118). There is now power to the Court to amend defective notices (*ibid.* sub-sect. (1), *post*, p. 118).

Miscellaneous Provisions.

Certain methods of evasion are foreseen and guarded against. Thus, if the landlord flings any burden previously borne by himself on the tenant, *e.g.*, if the landlord without raising the amount of the rent requires the tenant to do repairs formerly done by the landlord, this counts as an increase of rent (sect. 2, sub-sect. 3). Nor can the landlord require payment of a fine, premium, &c. in cash or otherwise as a condition of granting or continuing a tenancy, to do so is a summary offence —the tenant will be able to get back anything paid in this way by suing for it or deducting from his rent (sect. 14, see also sect. 19, *post*, p. 95); but this does not prevent a lessor from taking a fine or premium on granting a lease for fourteen years or more (sect. 8 (3)). A similar provision prevents the tenant making a profit (except out of the landlord) on giving up possession (*post*, pp. 87, 122). The taking of such a profit is made a summary offence. But the tenant is not prevented by the Acts from taking a premium on assigning his tenancy (*post*, p. 87). See, however, note to sect. 15 (2). In all these cases the fine or premium may take the shape of a demand that the tenant be required as a condition of his tenancy to buy furniture, &c. at an exorbitant price (Rent and Mortgage Interest Restrictions Act, 1923, s. 9, *post*, p. 122). A tenant can demand from the landlord a statement as to the standard rent, and failure without reasonable excuse to furnish the state-

ment is a summary offence, as are also certain entries in rent books and the like (*post*, pp. 61, 83).

Effect of the Acts as against Purchasers.

The purchaser is in general in the same position as the vendor from whom he buys, and the tenant is entitled to the same protection against a purchaser as against the original landlord. But this is subject to sect. 5 (1) (*ante*, pp. 6, 7), under which a purchaser may sometimes get possession where others could not. For further observations as to the rights of purchasers, see *post*, p. 62.

Sub-tenants, Lodgers and Service Occupation.

The Acts make clear that, subject to sect. 5 (1) (h), a sub-tenant is entitled to protection equally with the tenant (see *post*, pp. 65, 87). Persons having "service occupation" are not within the protection of the Acts (*post*, pp. 47, 67), nor are lodgers, as to whom see, however, *post*, p. 119.

Sub-lessors of part of the premises can be required to give details as to the sub-lease to the superior lessor (Rent and Mortgage Interest Restrictions Act, 1923, s. 7, *post*, p. 120).

Furnished Dwelling-houses.

Subject to the remarks (*ante*, p. 3) as to houses let at a rent which includes a sum for the use of furniture, the amount attributable to the use of furniture being comparatively trivial, the general provisions of the Acts have no application to the letting of furnished dwelling-houses, *e.g.*, the restrictions on the landlord's power of ejectment have no application. But where the rent in respect of a furnished dwelling-house shows more than 25 per cent. increase (not on the rent, but) on the "profits" as compared with the "normal profit" from a similar letting in the year ending August 3rd, 1914, the excess may be declared irrecoverable by the County Court (sect. 9, *post*, p. 60). Exorbitant charges for furnished letting are made a criminal offence (sect. 10, *post*, p. 61).

Existing Tenancies.

Certain existing tenancies are given special treatment by the Rent and Mortgage Interest Restrictions Act, 1923, s. 3, *post*, p. 116.

Mortgages.

Mortgages to which the Acts are applicable.—The Acts apply to mortgages comprising one or more dwelling-houses to which the Acts are applicable, whether the mortgaged property is wholly or merely partly of that character, except:—

(1) Mortgages where other land is also included, if the rateable value of the dwelling-house is less than one-tenth the rateable value of the whole of the land comprised in the mortgage (sect. 12, sub-sect. 4).

(2) Equitable charges by deposit of title-deeds or otherwise.

(3) Mortgages created after the 1st July, 1920.

(4) Mortgages of ground rents (sect. 12, sub-sect. 7).

As to mortgagors in possession and as to the effect of decontrol on mortgages, see *post*, p. 115.

Increasing Mortgage Interest.

The above general observations (*ante*, p. 10) as to "raising rent" apply also to raising the rate of mortgage interest. The mortgagee, apart from the Act, cannot raise the mortgage rate of interest without the consent of the mortgagor. All he can do (and again the Act restricts his powers as to even this) is to bring pressure to bear by calling in his mortgage. Whether the Act impliedly imposes any statutory obligation on the mortgagor to pay any increased rate, and, if so, in what circumstances, is a point of difficulty. The matter is discussed, *post*, p. 33 *et seq.*

The standard rate of interest.—The Acts fix a standard rate of interest, viz., the rate payable on August 3rd, 1914, or if the mortgage was created since that date the original rate of

interest (sect. 12, sub-sect. 1 (b)), the mortgagee being prevented from raising the rate of interest above the standard rate, except within specified limits, and any agreement by the mortgagor to pay the higher rate being unenforceable (sects. 1 and 4). It is to be observed that a radical distinction exists between standard rent and standard interest. As already pointed out, the standard rent is fixed for the house, not simply for a particular tenancy—it will govern all future tenancies of the property. The standard rate of interest, on the other hand, is a standard for that particular mortgage and will not affect other mortgages of the same property.

Permitted increase of mortgage interest.—Mortgage interest can be increased by 1 per cent. in excess of the standard rate up to a limit of 6½ per cent. As to houses within the repealed Acts the increase could not exceed ½ per cent. till the 2nd July, 1921 (*post*, p. 33). Where overpayment of mortgage interest has been made it is recoverable subject to a time limit (*post*, pp. 82, 121).

Restriction on mortgagee's powers.—A mortgagee under a mortgage to which the Acts apply may not during the continuance of the Acts call in his mortgage or foreclose or sell or take other steps to enforce his security or to recover the principal, unless interest at the rate permitted by the Acts is twenty-one days in arrear or the mortgagor is breaking his covenants or letting the property get into disrepair or not making payments falling due under prior incumbrances (sect. 7).

But this provision does not apply to mortgages repayable by instalments spread over not less than ten years. Nor does it prevent a mortgagee from exercising his power of sale when he was in possession on the 25th March, 1920, or where he does so with the mortgagor's consent, or where the mortgaged property is leasehold and the mortgagee satisfies the County Court that the security is seriously diminishing in value or otherwise in jeopardy and that it is reasonable to call it in.

And the provision of course does not apply to mortgages outside the Acts, *e.g.*, equitable charges by deposit or mortgages of ground rents or mortgages created after the 1st July, 1920 (sect. 12, sub-sects. 4 and 7). The protection formerly afforded to mortgagors by the Courts (Emergency Powers) Acts ceased on August 31st, 1922.

For further discussion of the difficult questions connected with mortgages, see *post*, p. 33 *et seq.*

Provisions as to Rating.

The increase of rent permitted by this Act is not to take a house outside the existing provisions as to compounding: this is effected by sect. 16. The Act also contains provisions as to the rating of newly-erected houses (sect. 12 (9)). See also on rating, *Poplar Union* v. *Roberts*, *post*, p. 25.

The Housing, Town Planning, etc. Acts.

By sect. 35 of the Housing, Town Planning, etc. Act, 1919, nothing in the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, or the amending Acts is to affect the provisions of sect. 17 of the Housing, Town Planning, etc. Act, 1909 (which provisions provide for recovery from a tenant of premises in respect of which a closing order has been made), or prevent a local authority from obtaining possession of any house required, for the exercise of their powers under the Housing Acts. Sect. 35 appears equally to apply to the present Acts. (Interpretation Act, 1889, s. 38 (1). Cp. *Blake* v. *Smith*, *post*, p. 87.) The language of sect. 5 (1) (e) needs consideration in this context, but, it is thought, does not, nor do the amendments due to the Housing, &c. Act, 1923, affect the above result.

Courts having Jurisdiction under the Acts.

See remarks hereon, sect. 17, *post*, p. 89.

The Acts apply to proceedings under the Small Tenements Recovery Act, 1838. As to some matters the County Court

has exclusive jurisdiction, and is given a general power of determining various questions. (Rent and Mortgage Interest Restrictions Act, 1923, s. 11 (1), *post*, p. 123.) Power is given to make rules (*post*, pp. 89, 123, 128), and these rules are given in Appendix II.

Administration of Justice Act, 1920.

By sect. 3 (2) of this Act, "notwithstanding anything in any Act it shall not be lawful for any party in a County Court or other civil Court of inferior jurisdiction to require any action or other matter arising under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, to be tried with a jury."

See observations as to this, *post*, p. 90.

The Position after June 24th, 1925.

The general operation of the Acts ceases on June 24th, 1925. But, under Part II. of the Rent and Mortgage Interest (Restrictions) Act, 1923, tenants and mortgagors will still get the benefit of certain discretionary powers given to the Court for their protection.

Summary of Legislative Changes since the Act of 1920.

Those already acquainted with the principal Act may find it convenient to have a separate indication of the chief statutory alterations since that Act. These are due to three statutes:—The Rent Restrictions (Notices of Increase) Act, 1923 (a full account of which is given *post*, p. 99); the Rent and Mortgage Interest Restrictions Act, 1923 (to which the section references below refer); and the Prevention of Eviction Act, 1924. The chief features of these two Acts are as follows:—

(1) The principal Act as amended is continued till 24th June, 1925 (sect. 1, *post*, p. 112).

(2) Provision is made whereby in certain circumstances houses become decontrolled, with a possibility of becoming recontrolled again in certain events (sect. 5 (7) of the principal Act as amended, *post*, p. 53).

(3) Where at July 31st, 1923, there is an existing tenancy lasting after June 24th, 1923, and complying with certain conditions, the landlord can by three months' notice expiring not later than March 31st, 1924, require the tenant either to forego the continued protection of the Acts as to the amount of rent payable, &c., or to treat the tenancy as determined and remain on, if at all, merely as statutory tenant (sect. 3, *post*, p. 116).

(4) The conditions on which possession can be recovered from a statutory tenant are altered and extended, a new section being substituted for sect. 5 of the principal Act. The amended section is printed *post*, p. 37 *et seq.*, with the alterations indicated in italics. It is shortly summarised, *ante*, p. 6. The Prevention of Eviction Act, 1924, further amended sect. 5 of the principal Act as regards the conditions in which ejectment can be granted. The result will be found *post*, p. 49, and is shortly that the requirement of premises by the landlord for personal occupation or occupation by a son or daughter is now so hedged round with conditions that this ground of application for possession is no longer an easy one to show.

(5) The facilities for suspension of increase of rent on the ground of disrepair are extended (sect. 5, *post*, p. 117).

(6) The Court is given power to amend the statutory form of notice of increase, and that form is itself slightly altered (sect. 6, *post*, p. 118).

(7) A further increase of rent is allowed where part of the house is sublet (sect. 7, *post*, p. 118).

(8) A time limit for the recovery of overpayments of rent or mortgage interest is imposed (sect. 8, *post*, p. 121).

(9) Excessive charges for the sale of furniture, &c. are made to constitute a premium for the purposes of sects. 8 and 15 of the principal Act (sect. 9, *post*, p. 121).

(10) A house will no longer be taken out of the Act because the rent includes attendance or the use of furniture unless the amount attributable to these things is a substantial part of the entire rent (sect. 10, *post*, p. 122).

(11) A general power is given the County Court of determining in the abstract questions under the Acts, and facilities are given whereby disputes may be decided by the County Court judge or registrar sitting as arbitrator (sect. 11, *post*, p. 123).

(12) Certain provisions are made dealing with the position after the expiry of the principal Act on June 24th, 1925 (Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 123).

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

10 & 11 Geo. 5, c. 17.

An Act to consolidate and amend the Law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on such premises, and for purposes in connection therewith. [2nd July, 1920.]

Restrictions on Increase of Rent and Mortgage Interest.

1. *Restriction on increasing rent and mortgage interest.*—Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the twenty-fifth day of March nineteen hundred and twenty, or is hereafter, increased, then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be:

As to increase of rent or interest, see remarks, *ante*, p. 10. In dealing with this provision and, indeed, with the Act generally, it must be remembered that the statutory notice of increase will not prejudice the contractual rights of a tenant or make him liable for an increase during the period of any existing tenancy: the increase cannot take effect till any such tenancy determines. This is a "basic principle" (*Glossop* v. *Ashley*, (1921) 2 K. B. at p. 456).

It was held in *Kerr* v. *Bryde*, ((1923) A. C. 16), affirming *Newell* v. *Crayford Cottage Society*, (1922) 1 K. B. 656, that

this principle applies even in the case of continuing tenancies (*e.g.*, weekly ones), though the practical operation of the rule is mitigated in some cases by the Rent Restrictions (Notices of Increase) Act, 1923, which makes the statutory notice of increase in itself a notice to quit, *post*, p. 100. And in any case where an existing tenancy has once been determined there is no need for further notice to quit on any further increase of rent as against a statutory tenant. (*Shuter* v. *Hersh*, (1922) 1 K. B. 438; *Felce* v. *Hill*, (1923) W. N. 235). See also *Creamer* v. *Mitchell* ("Estates Gazette," 21st April, 1923).

This section avoids an agreement for excessive increase of rent or interest accruing due after March 25th, 1920. As regards houses which were within the previous Acts, the apparent effect of sect. 19 (3) is practically to substitute for March 25th, 1920, the date August 3rd, 1914, in respect of houses which fell within the Act of 1915, and 25th December, 1918, in respect of 1919 Act houses (see *post*, p. 95). Where the increase took place before 25th March, 1920, so that it is not hit by this section, its validity will depend on the earlier Acts. It is useful, therefore, to notice that even under these no increase was possible till any existing tenancy had determined (*Smith* v. *Lloyd*, (1923) W. N. 197).

The material date by which to judge whether the rent has been increased since March 25th, 1920, is the date when the increase comes into effect, *viz.*, the date when the new rent begins to run, not the first date when it becomes payable (*Raikes* v. *Ogle*, (1921) 1 K. B. 576), nor the date of the agreement to make the increase. (*Goldsmith* v. *Orr*, (1920) W. N. 250; see also sect. 4, *post*.) Where by agreement dated March 12th, 1920, premises were let for a term of years "from March 25th, 1920," at a rent in excess of the standard rent, it was held the rent commenced to accrue on March 26th and had been increased since March 25th (*Raikes* v. *Ogle*, (1921) 1 K. B. 576). See also *Brakspeare & Sons, Ltd* v. *Barton* ((1924) 2 K. B. 88) (a case of agreement for a lease to operate retrospectively). The onus of proving that increase was made after the critical date is on the tenant (*Booth* v. *Mace*, "Estates Gazette," June 14th, 1924).

The clause applies to new tenants as to old; the landlord cannot raise the rent beyond the permitted limits (and see *post*, p. 23) even on re-letting. The standard rent is fixed for the house, not the particular tenant (*King* v. *York*, (1919) W. N. 59). This is, however, now subject to the provisions as to decontrol and re-letting contained in the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, *post*, p. 112.

Increases of mortgage interest are dealt with in a note to sect. 4. As to "dwelling-house," "standard rent," "standard rate of interest," "tenant," "landlord," "mortgagor," "mortgagee," see sect. 12, *post*, and as to the right to recover overpaid rent or interest, see sect. 14, *post*.

Sect. 1]

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

"Passing of this Act," *i.e.*, 2nd July, 1920. Since the landlord is liable to refund anyhow (sect. 14), the object of this proviso is not easy to understand. Possibly, however, it was framed to meet the case of an increase beyond the permitted limits before the property fell within the Act, followed by a further increase after the Act applied. It is arguable on the wording of the earlier part of this section that this further attempted increase might reduce the rent actually payable to the permitted limit: if so, this proviso might be useful.

2. *Permitted increases in rent.*—(1) The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say:—

An express agreement by the tenant to an increase within the specified limits is valid (subject to the requirements of sect. 3, *infra*, as to notice, &c.), and (subject to the same conditions) the mere fact that the tenant holds over will make him personally liable for the increase, though whether in virtue of implied contract or of a statutory liability imposed by the Act, is not clear. The matter is discussed in *Glossop* v. *Ashley* ((1921) 2 K. B. 451 (McCardie, J.), and (1922) 1 K. B. 1, C.A.), and cp. *Cork Improved Dwellings Co.* v. *Barry* ((1919) 2 Ir. R. 244)—a case on the earlier Acts. *Hill* v. *Hasler* ((1921) 3 K. B. 643) favours implied contract. Where premises have been let at a rent below the standard rent, an increase cannot be effected by the statutory notice, so as to make the tenant liable not only for the permitted increases, but for the further sum necessary to bring his rent up to the standard rent (*Dufty* v. *Palmer*, (1924) 2 K. B. 35). See, however, what was said in *Glossop* v. *Ashley* ((1921) 2 K. B. at p. 458, and (1922) 1 K. B. at p. 7 (where "schedule" should apparently read "section"), and pp. 9 and 11. See also remarks in *Brakspeare* v. *Barton* ((1924) 2 K. B. 88). Assuming *Dufty* v. *Palmer* is right (which is perhaps doubtful), it would seem that the lower rent could not be increased so as to bring it up to the standard rent even by express agreement.

For the notice which must precede increase of rent, see sect. 3.

For the additional increases possible where the premises are partially sub-let, see *post*, p. 118.

(a) Where the landlord has since the fourth day of August nineteen hundred and fourteen incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case of such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended:

Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly:

Having regard to sect. 15 (1), improvements as a rule will only be possible by the tenant's consent.

It will be observed that no increase is possible under this clause in respect of ordinary repairs. For the notice which must be given before any increase, see sect. 3, *infra*, p. 31.

Whether street improvements would come within this clause is not clear. If the owner of a house fails to pave and channel the street fronting after notice, and the local authority thereupon does so and apportions the expense on the frontagers in the usual way, whether he has incurred expenditure within the clause is doubtful, but we incline to the negative view.

So, too, putting the drains in order or putting in new cisterns for old or new waterclosets for old would not appear to be a ground for increasing the rent, but to come under the head of "repairs." It is thought no increase could be made under this head where privies are converted into waterclosets on the requisition of the local authority.

(b) An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August nineteen hundred and fourteen, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which in-

cluded the date on which the rates first became payable thereafter:

See further as to increases for rates the note to sect. 3 (2), *infra*, p. 32, and for definition of "rates," see sect. 12 (1) (d), *infra*.

There can be added only the increase in the rates actually payable after taking into account the commission allowed by the overseers to the landlord under the provisions (*post*, p. 85) as to compounding (*Nicholson* v. *Jackson*, (1921) W. N. 251).

An increase can be added even where it is caused by a rise in the rateable value of the premises, and not in the rate itself (*Steel* v. *Mahoney*, (1918) W. N. 253; 34 T. L. R. 327); but the effect of the Act is not to be taken into account for rating purposes under the Valuation (Metropolis) Act, 1869, and the rateable value is not limited by the standard rent plus the highest increase permitted by the Act (*Poplar Union Assessment Committee* v. *Roberts*, (1922) 2 A. C. 93). Cp. also in this connexion, *Stirk & Sons, Ltd.* v. *Halifax Assessment Committee*, ((1922) 1 K. B. 264).

In *W. H. Sutton & Sons* v. *Hollerton*, (1918) W. N. 237, a house in Manchester, where rates are payable for the yearly period June 25 to June 24, was before the war let at 8*s.* 9*d.* a week. On January 5, 1918, the landlord served a notice informing the tenant that his rent would be 9*s.* 9*d.* as from February 2, 1918, owing to an increase in rates. From the particulars served with the notice, it appeared that for the year 1915—1916 the rates showed an increase of 12*s.* 2*d.* over 1914—1915; for the year 1916—1917 the increase, again as compared with 1914—1915, was only 2*s.* 9*d.*, and, similarly, for 1917—1918 only 6*s.* 9*d.* The landlord added together the total increase for the three years, making 1*l.* 1*s.* 8*d.*, and divided that amount by 21 (the number of weeks from February 2, 1918, to June 29, 1918), which brought out the sum of 1*s.*, which he sought to add to the weekly rent. It was held (on the similar wording of the Act of 1919) that an increase in the rent could only be made in respect of the increase in the rates on the current rating period. In this case the current rating period was the year ending June 24, 1918, the increase in the rates as compared with the 1914—1915 period was 6*s.* 9*d.*, and that must be divided by the number of weeks in the period, viz. 52. The divisor will be the number of weeks in the rating period even though notice of increase is not given to the tenant till that period has already begun (*Cardiff Corporation* v. *Isaacs*, (1921) W. N. 165). (See Article in "Law Notes," 1921, p. 74.)

It was held in *Cork Improved Dwellings Co.* v. *Barry*, (1919) 2 Ir. R. 244, that no increase was possible in respect of rates payable under local Acts incorporating the Towns Improvement Clauses Act, 1847, but on the ground that these are not chargeable

on the occupier as the language of the former Act required. The present Act contains no similar words and the decision, therefore, is not to be treated as conclusive of the existing law. Water rates are expressly included (see sect. 12 (1) (d), *post*, p. 66).

Where rates having gone up an increase of rent has been made and thereafter there is a reduction in the rates, it was held by the Court of Appeal, in *Strickland* v. *Palmer* (140 T. L. R. 649), that there must be a proportionate abatement of the increase. This overrules the decision of the Court below (40 T. L. R. 314), which had decided that the increase was valid when it was made, and no provision in the Act invalidated it by reason of subsequent happenings. The abatement in rent will not, however, take place contemporaneously with the decrease in the rates, for under sect. 12 (1) (d) of the Act (*post*, p. 66), the landlord is deemed to be paying rates at the original rate till the next rate is demanded, and it will apparently be from this date that the abatement of the increased rent must take place. The suggestion that a fresh notice of increase is needed when any fresh rate is made, even though not at an increased figure, is apparently unfounded.

(c) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent:

Provided that, except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent.:

(d) In further addition to any such amounts as aforesaid—

(i) Where the landlord is responsible for the whole of the repairs, an amount not exceeding twenty-five per cent. of the net rent; or

(ii) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability:

For a summary of the effect of these two last increases, see *ante*, p. 9.

For net rent, see sect. 12 (1) (c). Repairs are defined in subsect. (5) of this section, which also provides that the lessor is to be treated as responsible for repairs in the absence of agreement.

Sect. 2]

Where the lessor is not solely responsible, no notice of increase under this head is possible till the amount has been determined by agreement (prior to the notice) or by the County Court (*Bourne* v. *Litton* ((1924) 2 K. B. 10). But it was suggested by Scrutton, L.J., in this case that possibly sects. 8 and 11 of the Rent and Mortgage Interest Restrictions Act, 1923, may in future enable this difficulty to be overcome.

Under Schedule I. of the Income Tax Act, 1918, the landlord is assessable on the basis of being entitled to the full 40 per cent. increase under both clauses (c) and (d); he cannot claim that the increase under (d) is not rent, but a mere indemnity against liability to repair (*Biddle* v. *Morris*, (1924) W. N. 242).

(e) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the first day of March nineteen hundred and twenty, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of this Act, extending or modifying that agreement.

Many railway employees occupy at a nominal cost houses provided by the railway companies. The agreement referred to provides that these men shall in future pay rent so as to equalise their remuneration with those who are not so housed. This subsection enables the companies to alter the terms of such tenancies so as to carry out the agreement.

(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (d) of the foregoing subsection, the tenant or the sanitary authority may apply to the county court for an order suspending such increase, and also any increase under paragraph (c) of that subsection, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair.

The court on being satisfied by the production of a certificate of the sanitary authority, or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the

tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.

It will be noticed that this only applies to certain increases, not to increases in respect of improvements or rates. The High Court has no jurisdiction under this sub-section (*X Rays, Ltd.* v. *Armitage*, (1922) W. N. 27), nor does any appeal lie from the decision of the County Court (*Glasgow Corporation* v. *Mickel*, (1922) S. C. 228) even where the application is made by the sanitary authority as to repair (*ibid.*). See sub-sect. (5), *infra, post*, p. 29, and the Rent and Mortgage Interest Restrictions Act, 1923, s. 18 (5), *post*, p. 129. Compare, also, sect. 5 of that Act and sect. 3 of the Rent Restrictions (Notices of Increase) Act, 1923, *post*, pp. 108, 109. As to repairs, cp. sub-sect. (5) of this section, *infra*, p. 29.

(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

Thus if a house is let at 34*l.* per annum, lessor undertaking repairs, and a fresh agreement is made whereby the tenant undertakes repairs at the same rent, if the repairs are equivalent to 10*l.* per annum, the rent is deemed to be increased by that amount.

Sect. 2]

Semble, the tenant will be bound by his undertaking to repair, but is only liable for 24*l.* (plus the permitted increases) by way of rent.

In an unreported case of *Highfield* v. *Griffin*, decided by a Divisional Court on December 5th, 1921, this sub-section was held applicable where the incidence of rates was transferred to the tenant by the Sheffield Corporation Act, 1920. In *Brakspeare* v. *Barton* ((1924) 2 K. B. 88), the discontinuance of a discount on the price of liquors supplied the tenant of a tied house was held not a transfer of liability.

Experience has shown the need for a warning that the Act gives no power to the landlord to transfer liabilities to the tenant without consent.

(4) On any application to a sanitary authority for a certificate or report under this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

See further as to the certificate, Rent and Mortgage Interest Restrictions Act, 1923, s. 18.

(5) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

See *ante*, p. 9. As to the meaning of good and tenantable repair, see *post*, p. 129.

The lessor is only deemed to be liable to repair for the purposes of this section—there is no duty to repair cast on him by the Act.

(6) Any question arising under subsection (1), (2) or (3) of this section shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

"Landlord."—In this sub-section landlord is in relation to a sub-tenancy to include the superior landlord as well as the sub-lessor (Rent and Mortgage Interest Restrictions Act, 1923, s. 7 (3)).

"Final and conclusive."—See *post*, p. 74, and *Glasgow Corporation* v. *Mickel, ante*, p. 28. This sub-section gives no power to amend a defective notice (*Penfold and Thompson* v. *Newman*, (1922) 1 K. B. 645) or to fix the standard rent in the abstract,

apart from decision on other points (*Broomhall* v. *Property Owners and Agents, Ltd.*, (1922) 1 K. B. 311). But see *R.* v. *Judge of Marylebone County Court* ((1923) 1 K. B. 365, *post*, p. 74), though power now exists as to both matters under the Rent and Mortgage Interest Restrictions Act, 1923, ss. 6 (1), 11 (1), *post*, pp. 118, 123. It was held in *Dun Laoghaire Urban Council* v. *Moran*, (1921) 2 Ir. R. 404, that where a question arises under this sub-section as to the amount due, no order for possession can be made till it is determined. The sub-section only applies where application is made under it by either party for the decision of questions of administration by the County Court judge as arbitrator: it does not bar an appeal in a County Court action claiming arrears of rent, even though this Act be relied on in defence (*Strickland* v. *Palmer*, 40 T. L. R. 649). Language suggestive of the contrary is to be found in *Bourne* v. *Litton* ((1924) 2 K. B. 10), but without reference to *Strickland* v. *Palmer*, which appears right on principle.

3. *Limitation as to permitted increases in rent or interest.*—(1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage except in respect of a period during which, but for this Act, the security could be enforced.

This definitely establishes the "basic principle" which it is of fundamental importance to bear in mind throughout in interpreting these Acts. The Act is a "restriction" Act—except to the extent mentioned in the foot-note to sect. 2, *ante*, p. 23, it gives no power to increase rent, but limits any powers of the sort that would independently exist. A further discussion of this sub-section, and decisions thereon, will be found in the opening paragraphs of the note to sect. 1 (*ante*, p. 21) and in the introductory note to the Rent Restrictions (Notices of Increase) Act, 1923, *post*, p. 99.

It would seem from the case of *Schmit* v. *Christy*, (1922) 2 K. B. 60, that when there is a fresh letting of the premises this prevents any increase of rent even within the permitted limits. (*Sed quære.* For a criticism, see 41 "Law Notes," p. 319.) See now, however, the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (2), *post*, p. 113.

The meaning of "the security could be enforced" is obscure, and is discussed with other points as to increase of mortgage interest in a note to sect. 4, *post* p. 33.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is

Sect. 3]

increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

Notice is required even if the rent was increased before the Act (*Michael* v. *Phillips*, 155 L. T. Newspaper, 480, and in the Court below, (1923) W. N. 30; *Wortley* v. *Mann*, (1916) W. N. 390; *Bridges* v. *Chambers*, (1919) W. N. 34). (See also subsect. (3), *infra*.) Notice is necessary even on the occurrence of a new letting (unless notice of increase has already been given to a former tenant—see the concluding words of the sub-section) (*Schmit* v. *Christy*, (1922) 2 K. B. 60; *Bridges* v. *Chambers*, (1919) W. N. 34; *Michael* v. *Phillips*, *ubi sup.*). No notice under this sub-section is needed for the increases authorised by the Rent and Mortgage Interest Restrictions Act, 1923, s. 7. It was required by the Rent and Mortgage Interest (Restrictions) Act, 1919, s. 2, while that still operated (*Azulay* v. *Matthews*, 157 L. T. 366).

The notice, though it cannot operate till after, may be given before the expiration of an existing tenancy, *e.g.*, with (but probably not before) the notice to quit (*Hill* v. *Hasler*, (1921) 3 K. B. 643). Cp. *Peizer* v. *Federman* ((1921) W. N. 320); and notice is not bad because it is to take effect after a longer period than a week or a month from its date (*Hill* v. *Hasler*, *ubi sup.*).

Formal defects in notice of increase were, under the old Acts, held not fatal (*Steel* v. *Mahoney* (1918), 34 T. L. R. 328). But those Acts contained no statutory form of notice, and while trivial departure from the statutory form is probably not fatal, departure on a matter of substance invalidates the notice (*Peizer* v. *Federman*, (1921) W. N. 320). See also observations in *Penfold* v. *Newman* ((1922) 1 K. B. 465). It is fatal if the notice

is in error as to the date from which the increase commences (*ibid.*), or as to the amount of the increase under sect. 2 (1) (c) (*Penfold and Thompson* v. *Newman*, (1922) 1 K. B. 645), or as to the standard rent (*Diprose* v. *Halford*, "Estates Gazette," November 11th, 1922). But probably error as to the increase under sect. 2 (1) (a) and (b) would not be fatal (see *Penfold and Thompson* v. *Newman, ubi sup.* at p. 652), and it has been held in Ireland not fatal as to clause (a) and (d) (*Elliott* v. *Ellis*, (1923) 2 Ir. R. 45). But *Elliott* v. *Ellis* was said by Greer, J., in *Bourne* v. *Litton* ((1924) 1 K. B. 231, affirmed C. A., (1924) 2 K. B. 10), to be wrongly decided. In *Bourne* v. *Litton* it was held that the notice was invalidated by including an increase under sect. 2 (1) (d) for repairs where the landlord was not solely liable, and no determination of the amount of the increase had yet been made (*ante*, p. 27). Notice increasing rent from September 27th was held not invalidated because in error it gave three months from December 27th within which to apply to the County Court for suspension of the increase (*Goldsmith* v. *Arlidge*, "Estates Gazette," February 16th, 1924). Defects in the notice have not their former importance in view of the County Court's power of amendment under the Rent and Mortgage Interest Restrictions Act, 1923, s. 6, *post*, p. 118.

Questions have been raised in the inferior Courts in Scotland whether the notice can be signed by an agent. It is thought that there is no objection to this, but as the notice purports to be "by the landlord," it is perhaps safer for him to sign in person. At any rate, it is desirable that his name (and address) should appear even if the signature is by an agent.

The words, "or in respect of any period prior to," prevent the landlord from claiming the increase as from the date of the notice; the lessor is not only debarred from suing during the four weeks (or one week), but even when the notice is up cannot claim arrears of increase, so to speak, in respect of the period of notice. The increase cannot for any purpose be treated as starting till the period is up. Under the original Acts four weeks' notice was required for an increase in respect of rates as well as improvements, so that a landlord was prevented from recovering the increase in the rate in respect of the four weeks from the service of the notice (cp. *W. H. Sutton & Sons* v. *Hollerton*, *ante*, p. 25). This grievance was aggravated when the rate was not made until some weeks after the beginning of the ratal period (so that the landlord not knowing of an increase in rates could not meantime give notice). If not made for, *e.g.*, six weeks thereafter, the landlord would be unable to recover the increase in respect of the first ten weeks of the period. The Act to some extent remedies this by cutting down the notice required in respect of rates to one week, and by sect. 12 (1) (d), which effects a notional carry over of the existing rate into the next rating period until the new rate is demanded. Hence, a landlord giving notice

Sect. 3]

of increase after the expiration of a rating period, but before the new rate has been made, will be justified in basing his notice of increase on the figures of the last rate made. (Though if the next rate is at a lower rate than the previous one, as from the date when the new rate is demanded there will be an abatement of the increase made (*Strickland* v. *Palmer, ante,* p. 26).) Cp. (as to Scotland) the House Letting and Rating (Scotland) Act, 1920, which is still operative (Rent and Mortgage Interest Restrictions Act, 1923, s. 19).

(3) A notice served before the passing of this Act of an intention to make any increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

4. *Permitted increase in rate of mortgage interest.*—The amount by which the increased rate of interest payable in respect of a mortgage to which this Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum:

Provided that—

(a) the rate shall not be increased so as to exceed six and a half per cent. per annum; and

(b) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

The application of the Act to the increase of mortgage interest is a matter of much difficulty on which it is impossible to form any confident opinion. It will be convenient if we indicate here the general position as to mortgage interest and the possible interpretations of the Act on this matter; nothing except a judicial opinion can be much value.

One possible view on the language of the Act is that, apart from the mortgagor's assent, it is not possible to increase the rate of interest at all. The Act, it may be argued, is not an "increase of mortgage interest" Act, but an "increase of mortgage interest *restriction*" Act. Apart from the Act, the mortgagee could not of his own initiative and without the mortgagor's consent increase the rate of interest, and it may be said the Act gives no power of increase—it only prevents increases from being effective which would otherwise be so—makes an increase beyond the permitted limits ineffective even though agreed to. The Act,

it may be said in its own words "permits," *i.e.*, does not forbid, without itself authorising.

This view deserves consideration, but, it is submitted, is not the probable one. And one argument against the consent of the mortgagor being necessary is, perhaps, that it is difficult for him to give a valid assent. It has been suggested that the original covenant to pay interest being by deed, any agreement in variation would also have to be by deed. But it is not thought a deed is needed on this ground. In these days, a deed may be discharged by even a parol agreement if made for valuable consideration. (*Steeds* v. *Steeds*, 22 Q. B. D. 537.) The difficulty rather is in finding the valuable consideration. What has the mortgagee to offer in exchange for the mortgagor's promise to pay the higher rate in future? An undertaking not to enforce his security? But the Act already safeguards the mortgagor in this respect. (See sect. 7.) It is not easy to see what consideration in normal cases there could be. Perhaps the likeliest consideration is to be found in this, that the whole position is so obscure and the rights of the parties so debateable, that the agreement has some claim to be treated as the compromise of disputed rights.

While there is an arguable case contra, therefore, it is probably the better view on the Act as a whole that no consent by the mortgagor is necessary to make the increase effective.

Presumably, however, even so no increase can be claimed till notice to that effect has been given to the mortgagor (though it is curious that the Act contains no express provision as to notice of increase of mortgage interest corresponding to sect. 3 (2) as to increase of rent).

Assuming that this is so, that no consent by the mortgagor is needed, which is the view we think the Court would struggle to accept, there still remain difficult questions hanging by sects. 7 and 3. Can the mortgagee give notice of increase taking effect at once, or must the notice, at any rate in the usual case (*i.e.*, where there is no breach of covenant or failure to repair by the mortgagor), await before it takes full effect the expiration of due notice calling in the mortgage?

By sect. 7 it is made unlawful for the mortgagee in cases where the Act applies to call in his mortgage or take any steps for exercising any right of foreclosure or sale or for otherwise enforcing his security, unless (1) interest at the permitted rate is 21 days in arrear, or (2) mortgagor is breaking his covenants, or (3) failing to keep the property in repair and keep down prior incumbrances.

By sect. 3 nothing in the Act is to be taken as authorising an increase "except in respect of a period during which but for this Act the security could be enforced."

Sect. 4]

Now what is meant by "could be enforced"? The most natural interpretation of the expression would be "could be enforced by sale." But this interpretation appears to conflict with sect. 7, which says the mortgagor cannot call in his mortgage or sell as long as the mortgagor observes the conditions enumerated. The mortgagee cannot call in his mortgage or take any steps for exercising a right of foreclosure or sale or for otherwise enforcing his security till interest at the rate permitted is more than twenty-one days in arrear, and the rate permitted must be the old rate without any increase till such time as the mortgagee is in a position to sell. On this showing so long as the mortgagor keeps up his payments of interest at the original rate (unless, which is not likely, he is guilty of breaches of covenant or lets the property fall into disrepair) no increase will ever be possible.

This result is hardly probable, and it is necessary therefore to consider whether some other interpretation can be given to "could be enforced" leading to more satisfactory results.

Foreclosure is one method of enforcing the security—it is treated as such in sect. 7 ("exercising any right of foreclosure or sale or *otherwise enforcing*"). But this is a method he is free to adopt as soon as the time for repayment has arrived—usually in practice at the end of the first six months. Taking possession is presumably another method of enforcement—unless there is something special in the mortgage deed to prevent it, he can take this step as soon as the mortgage is executed. Or "could be enforced" may, perhaps, be read as meaning that the stipulated time for payment has expired and the mortgagor is in default.

But if on sect. 3 we interpret "the security could be enforced" in any of these ways, we seem to empty the section of practical operation. As a result, the section would hardly ever prevent an increase. In the absence therefore of any discoverable interpretation which does not either unduly strain the language of the Act or go far to render its provisions nugatory, it is impossible to forecast with any certainty the view which the Courts may ultimately adopt.

There is a further difficulty beyond that connected with the method of increase, but to some extent involved therewith. Suppose the increase effectively made, what is the result? Is it only that the mortgagor must pay the increase or lose the protection of the Act, or is it also that he is personally liable? (It seems from *Hollands* v. *Cooper* (*infra*) that the mortgagor may apparently be personally liable and yet enjoy the protection of the Act as regards enforcement of the security.) The Act possibly imposes on the statutory tenant a statutory liability of a personal nature (*ante*, p. 23), but rent and mortgage interest do not necessarily stand on the same footing and are far from exactly analogous in this respect. And is the increase a charge on the property and to be allowed in foreclosure accounts as against the mort-

gagor? And, if so, is it also allowable against a puisne incumbrancer? These questions are all of great difficulty. It is thought that, at any rate, the mortgagor, unless he has assented thereto, is not personally liable for any increase, nor could he be debited therewith on a sale or in foreclosure proceedings.

The position is certainly rendered no clearer by the decision in *Hollands* v. *Cooper*, (1921) W. N. 298. In that case a mortgagor whose rate of interest in 1914 was $4\frac{1}{2}$ per cent. agreed in September, 1914, to pay at 6 per cent. Sect. 1 of this Act did not invalidate this agreement, for it was made before March 25th, 1920; nor did the former Acts invalidate it, for it so happened that notice calling in the mortgage had been given before August, 1914, and in those circumstances there was an express exception from the former Acts. It seems clear, therefore, that the 6 per cent. increase was a valid one, and the mortgagor liable on his agreement to pay it. It was held, however, by Astbury, J., that the "permitted rate" for the purposes of sect. 7 was $4\frac{1}{2}$ per cent. plus the extra percentage mentioned in sect. 4—the present section. Consequently if the mortgagor is paying $5\frac{1}{2}$ per cent., the mortgagee, it was held, cannot foreclose. If this is right, then sect. 4 is apparently not, as might be thought, a mere addendum to sect. 1, but rather in the nature of an independent enactment. (For a discussion and criticism of this case, referred to doubtfully by Scrutton, L. J., in *Sinclair* v. *Powell* ((1922) 1 K. B. at p. 402), see "Law Notes," December, 1921, p. 293.)

The principle of *Goldsmith* v. *Orr* (*ante*, p. 22) would appear also to apply to mortgage interest, so that the date of the increase, and not the date of the agreement to pay the increase, is the ruling factor. Thus, where mortgagor has before 25th March, 1920 (or, as to properties which fell within the previous Acts (*post*, p. 95), August 3rd, 1914, or December 25th, 1918), agreed to pay an additional 2 per cent. as from March 25th, 1920, the increase is irrecoverable so far as it exceeds the above limits. As to houses falling within the repealed Acts, the increase permitted is not in addition to one already made under those Acts. If the interest on the mortgage of a 1919 Act house had already been increased by $\frac{1}{2}$ per cent., no further increase was possible till the 2nd July, 1921.

FURTHER RESTRICTIONS AND OBLIGATIONS ON LANDLORDS AND MORTGAGEES.

[NOTE.—For sect. 5 of the Act as it originally stood, the Rent and Mortgage Interest Restrictions Act, 1923, s. 4, substitutes a fresh section incorporating sundry amendments, and the Prevention of Evictions Act, 1924, has introduced further modifications. The section is here printed in the substituted form, the resulting additions (all of which except that on p. 49 are due to the Act of 1923), being indicated by italics. For the original form of the section, see Appendix, *post*, p. 148.]

5. *Restriction on right to possession.*—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

It is this sub-section which confers on the tenant the fundamental protection of the Act, depriving the Court of jurisdiction to grant ejectment save in specified cases and (it is important to notice, as the drafting of the Act renders it liable to be missed) giving it a discretion even in those cases. (See *post*, pp. 38, 47.) The wording in many respects is derived from the earlier Acts, but the effect of the sub-section as a whole, especially in its amended form, is very different. For this reason, such decisions as the following have no bearing on the construction of the present Act:—*Stovin* v. *Fairbrass*, 147 L. T. Newspaper, 210; *Stephens* v. *Tatham*, (1919) W. N. 334; *Price* v. *Pritchard*, 35 T. L. R. 672; and the Irish cases reported 53 I. L. T. at the pages mentioned:—*Hipps, Ltd.* v. *Hughes*, 111; *Sloane* v. *Cooke*, 209; *Sammon* v. *Cawley*, 224; *Gildea* v. *Conway*, 166; and the Scotch case of *Smith* v. *Barclay*, (1920) 1 Scots L. T. 13. The section is not a statutory defence of which notice must be given under the County Court Rules (*Barton* v. *Fincham*, (1921) 2 K. B. 291). Even if the effect of the Act is not raised by the parties, the County Court must, in virtue of rule 18 of the Increase of Rent, &c. Rules, take that effect into account (*Salter* v. *Lask*, (1924) 1 K. B. 754).

Under this section the tenant or sub-tenant (sect. 12 (1) (f) and (g), *post*, p. 67, see also sub-sect. (5) of this section, *post*, p. 51) of premises to which the Act applies, cannot be turned out except on one of the grounds mentioned in the sub-section. The section deprives the Court of jurisdiction to grant ejectment except on the grounds specified: accordingly, there can (except under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (2), *post*) be no contracting out of the section whether in virtue of the usual clause in his lease by which the tenant agrees to give up possession on the termination of the term (*Artizans Dwellings Co.*

v. *Whitaker*, (1919) 2 K. B. 301), or by subsequent independent contract (*Barton* v. *Fincham*, (1921) 2 K. B. 291). Even in the cases where the Court has jurisdiction it is not to grant ejectment unless it thinks it reasonable so to do, as on the facts it was held not to be in *Upjohn* v. *Macfarlane* ((1922) 2 Ch. 256; (1922) W. N. 138 and 195). (See also *Williamson* v. *Pallant*, *post*, p. 47.) Under the former Acts payment of rent plus the permitted increases, and observance of the tenant's covenants, were absolutely essential conditions of protection, even tender of the rent after commencement of proceedings claiming possession being insufficient to secure the benefit of the Act (*Beavis* v. *Carman*, (1920) W. N. 159). Under this Act, although the tenancy has determined and the tenant is not paying the increased rent under this Act, or possibly even not paying any rent at all, the Court is not to eject him unless it thinks it reasonable so to do (*Urwickee* v. *Gutkin*, (1921) 55 Ir. L. T. Rep. 39).

The discretion given to the Court by this section is very wide, little indication being given of what is the criterion of reasonableness.

Question was formerly raised whether a lessee for a fixed term was protected from having to give up possession at the expiration of his lease, since after determination of his lease he was no longer "a tenant." But the opinion that he was protected just as much as a tenant who received notice to quit and refused to give up possession, advanced by us in previous editions, was inferentially adopted by Mr. Justice Greer in *Vernon Investment Association* v. *Welch* (1919), 35 T. L. R. 511, and finally affirmed in *Cruise* v. *Terrell*, (1922) 1 K. B. 664.

The Act, it will be noticed, does not prevent the landlord from giving notice to quit; it merely provides that no order for recovery of possession or for ejectment is to be made (see *Barton* v. *Fincham*, (1921) 2 K. B. 291, *ante*, p. 37); and this section gives no power to eject a tenant. It only restricts any right to possession which would, apart from it, exist. Thus, a tenant from year to year, *e.g.*, cannot be turned out under (d) on the ground that the house is required for personal occupation by the landlord unless the tenancy is determined. It must be remembered, however, that the statutory notice of increase may amount to notice to quit determining the tenancy (Rent Restrictions (Notices of Increase) Act, 1923, *post*, p. 100).

Where such notice to quit is given, the effect of subsequent acceptance of rent is dealt with by sect. 16 (3), *post*, p. 88.

This section, subject to clause (c), *infra*, protects the tenant even if he himself gave notice to quit (*Artizans, Labourers and General Dwellings Co., Limited* v. *Whitaker*, (1919) 2 K. B. 301; *Hunt* v. *Bliss*, 36 T. L. R. 74), but it was held on the old Acts that he was in such a case liable for double rent under the Distress for Rent Act, 1737 (*Flannagan* v. *Shaw*, (1920) 3 K. B.

Sect. 5]

96, overruling the same case in the Court below). In view of sect. 15 of this Act it may be this is not now so. See, however, the dictum of Scrutton, L. J., in *Barton* v. *Fincham*, (1921) 2 K. B. at p. 299, and *Northcott* v. *Roche*, 37 T. L. R. 364, where it was assumed without argument that *Flannagan* v. *Shaw* is still applicable. The tenant is protected from liability to double value under the Landlord and Tenant Act, 1730 (*Crook* v. *Whitbread*, 147 L. T. Newspaper, 80).

In deciding whether to give judgment for possession, the Court must consider the circumstances existing at the date of the hearing, not at the date of termination of the tenancy (*Nevile* v. *Hardy*, (1921) 1 Ch. 404; *Harcourt* v. *Lowe*, 35 T. L. R. 255; *Artizans, &c. Co.* v. *Whitaker*, (1919) 2 K. B. 301; and *Kimpson* v. *Markham*, (1921) 2 K. B. 157), nor some date subsequent to the hearing (*Lees* v. *Duley*, (1921) W. N. 283). The section does not protect a tenant who is bankrupt (*Reeves* v. *Davies*, (1921) 2 K. B. 486; *Parkinson* v. *Noel*, (1923) 1 K. B. 117, *post*, p. 67).

(a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

(a) "Any rent lawfully due . . . not paid, or any other obligation . . . broken."—"Lawfully due," see note to sect. 2 (1), *ante*, p. 23. A tenant holding over in virtue of the Act is not failing to perform an obligation of the tenancy by reason of his lease containing the usual express condition for possession by landlord on termination of the lease (*Artizans, Labourers and General Dwellings Co., Ltd.* v. *Whitaker*, (1919) 2 K. B. 301).

For examples of obligations under the Act, see sect. 16, *post*. In *Chapman* v. *Hughes*, 39 T. L. R. 260, where tenant was under covenant not to permit the premises to be used for any trade or business and had sub-let to a tenant for a trade purpose, it was held that an order for possession could be made against the sub-tenant on the ground that (1) the sub-tenant was breaking a condition of his own statutory tenancy, his own tenancy having incorporated the restriction on business user, and (2) that the act of the sub-lessor in sub-letting was a breach of an obligation of the tenancy. The second ground makes "obligation of the tenancy" include in the case of a sub-lessee not only his own obligation but that of the sub-lessor. It seems difficult to reconcile this with the provisions of sect. 15 (3), *post*, p. 87.

We may again point out that the Act does not authorise possession merely for failure to observe the obligations of the tenancy.

It only restricts any right to possession which would have arisen independently. So that no right to possession will arise unless the lease has determined or contains (as it usually will) a proviso for re-entry in such event. Even if there is a proviso for re-entry, however, and proper notice has been given under sect. 14 of the Conveyancing Act, 1881, this sub-section gives a discretion to the Court as to making an order for possession, and therefore overlaps the Conveyancing Act, 1881, s. 14, as to relief from forfeiture for breach of covenant, and the Common Law Procedure Acts as to relief from forfeiture for non-payment of rent. Where, however, the tenancy has been terminated and the tenant is a statutory tenant only, these provisions as to relief are not applicable (*Brewer* v. *Jacobs*, (1923) 1 K. B. 528; *Chartres* v. *Muldoon*, 57 Ir. L. T. Rep. 102).

In virtue of the present Act, the tenant may practically get relief in cases where otherwise relief would be impossible, *e.g.*, breach of covenant against assigning or under-letting will not prevent the Court extending the protection of the Act to the tenant if it thinks fit. Cp., however, *post*, p. 52. And the Court will not necessarily grant possession even if there is a right of re-entry on non-payment of rent (*ante*, opening note to this section, and cp. *Reeks* v. *Shelley*, 36 T. L. R. 868).

(b)* the tenant or any person residing *or lodging* with him *or being his sub-tenant* has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person, *and where such person is a lodger or sub-tenant the court is satisfied that the tenant has not before the making or giving of the order or judgment taken such steps as he reasonably ought to have taken for the removal of the lodger or sub-tenant;* or

(b) "Nuisance or annoyance."—Annoyance, according to *Tod-Heatly* v. *Benham*, 40 Ch. D. 80, is not a word with any definite legal meaning. The meaning of the word as found in restrictive covenants will be found discussed in that case and *Wood* v. *Cooper*,

* See note at head of this section.

Sect. 5]

(1894) 3 Ch. 671, holding that annoyance is a wider word than nuisance and covers anything which would be likely to trouble the mind or pleasure of an ordinary sensible person even if it do not amount to physical detriment to comfort. The interpretation of the word in this place must no doubt proceed on similar lines, the test being not whether annoyance is in fact caused to the complainants but whether it would be caused if they were reasonable people. Where a room or rooms are sub-let to a sub-tenant, and the sub-lessor is seeking possession thereof against the sub-tenant, it is thought that the sub-lessor would himself be an "adjoining occupier" within this clause.

"Illegal or immoral."—This does not refer to a mere isolated illegality (*Waller* v. *Thomas*, (1921) 1 K. B. 541).

"The tenant has not . . . taken steps."—It must be remembered that "tenant" includes sub-tenant—the nuisance, &c. complained of by the superior lessor will usually enable the sub-lessor to eject his own sub-tenant. Cp., however, *Berton* v. *Alliance Economic Investment Co.*, *post*, p. 53.

(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

(c) "The tenant has given notice to quit," &c.—This gives statutory effect to the decision on the former Acts of *Green-Price* v. *Webb*, 112 L. T. 491. Cp. also *Hunt* v. *Bliss*, 36 T. L. R. 74. A statement by a tenant whose lease is about to expire that he does not intend to hold over is notice to quit for this purpose (*Gilbert* v. *Jordan*, (1920) W. N. 309; cp., however, *Barrett* v. *Marshall*, 54 Ir. L. T. 214). In *Hylton* v. *Heal*, (1921) 2 K. B. 438, it was held that if the tenant has given notice the section operates as against his sublessee.

(d)* the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, *or for any son or daughter of his over eighteen years of age*, or for any person bonâ fide residing with him, or for some person *engaged* in his whole time employment or in the whole time employment of some tenant

* See note at head of this section.

from him, *or with whom conditional on housing accommodation being provided a contract for such employment has been entered into,* and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation *is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family* **as regards extent, character and proximity to place of work and which consists either of a dwelling-house to which this Act applies or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies;* or

(d) "Reasonably required."—It may be this though the lessor has been obliged to obtain other premises where he is temporarily resident (*Nevile* v. *Hardy,* (1921) 1 Ch. 404). The Court must be satisfied not only that possession is reasonably required by the landlord, *e.g.*, on the ground of nearness to business (*Jackson* v. *Harbour,* "Estates Gazette," April 5th, 1924), but also that circumstances are otherwise such that it is reasonable to make the order (*Williamson* v. *Pallant,* (1924) W. N. 144; *Shrimpton* v. *Rabbits,* 40 T. L. R. 541, *post,* p. 50).

"Residing with him."—In the original section the words were "residing or to reside."

"For some person in his whole time employment."—Under the section as it originally stood, these words were held to mean a person already in the employ at the date of hearing, not, *e.g.*, a foreman whom the landlord was about to employ (*Rex* v. *Rogers, Ex parte Hodson,* (1918) W. N. 128), or even a person who was already engaged but had not yet actually commenced working being prevented by the lack of accommodation (*Spencer* v. *Fox,* (1922) W. N. 141). But the sub-section as now amended will, of course, cover such cases. The words "whole time" override the decision under the earlier Acts in *Wall* v. *Gibbs,* (1920) W. N. 187, that the employment need not be exclusive.

"Alternative accommodation."—Observe that alternative accommodation is not necessary in the cases mentioned below, *post,* pp. 47 *et seq.* The onus of proof of alternative accommodation is on the landlord (*Nevile* v. *Hardy,* (1921) 1 Ch. 404). In an Irish case (*Keiran* v. *Dunne,* 54 I. L. T. 51) it was said that

* See note at head of this section.

Sect. 5]

while the plaintiff may have the onus of proving that there is available alternative accommodation, the defendant has also the onus of proving that such alternative accommodation does not exist; but this cannot be relied on since *Nevile* v. *Hardy* (*ubi sup.*). Technically the landlord need not himself tender the alternative accommodation if he can otherwise prove that it exists (*Bazalgette* v. *Hampson,* (1920) W. N. 59). The date for testing availability is that of the hearing (*Nevile* v. *Hardy,* (1921) 1 Ch. 404; *Kimpson* v. *Markham,* (1921) 2 K. B. 157).

Alternative accommodation figured in the earlier Acts, but the accompanying language was different, and decisions on the earlier legislation, such as *Wilcock* v. *Booth,* 36 T. L. R. 213, afford no assistance as to the present Act. And decisions on the present Act prior to its amendment in 1923, will not necessarily apply to the Act in its amended shape, which greatly alters the nature of the accommodation required. The test under the sub-section in its original shape was comparison with the house included in the tenancy: under the sub-section as amended, the test is the means and needs of the tenant. In its use of the word "family," the draftsmanship of the sub-section is most undesirably vague—judicial interpretation alone can settle the meaning in this particular context. Possibly "family" is to be read in an extended sense as including all usual members of the household. And having regard to the fact that the Act covers houses of considerable size, an interpretation which includes servants would, for the purpose of this paragraph, be a reasonable one. It is just possible, indeed, that the Court might give the expression a wide enough meaning to include lodgers as such. On the other hand, it must be remembered that the expression "family" occurs also in sect. 12 (1) (g) of this Act where an interpretation including servants and lodgers is not probable.

The concluding words of this paragraph will probably add to the difficulty of proving alternative accommodation. They require that the alternative accommodation shall be either:—

(1) Another house within this Act. This, it may be thought, can rarely happen, since, if the house is vacant, it will usually be *ipso facto* outside the Act (sect. 2, Rent and Mortgage Interest Restrictions Act, 1923, *post,* p. 112). But it must not be too lightly assumed that vacant possession involves decontrol (see *post,* p. 114, and exceptions there given). Or

(2) Another house on terms which give security of tenure equivalent to that of the Act. This seems to mean that it would be sufficient alternative accommodation if the tenant could lease a suitable house on suitable terms for a period not expiring prior to 24th June, 1925, when the protection of the present Act expires. It is, however, arguable whether even then if the lease contains the usual proviso for re-entry the tenant's position under the lease is reasonably equivalent to that which he would have occu-

pied under the Act, which would give the Court a discretion as to ejecting him even for non-payment of rent, &c. (*ante*, p. 38).

The alternative accommodation had formerly to be in the same neighbourhood (*Wilcock* v. *Booth*, 122 L. T. R. 678; *Bazalgette* v. *Hampson*, (1920) W. N. 59, and an unreported case of *Nathan* v. *Hart* (*Daily Telegraph*, 5th June, 1919) decided on the old wording of the 1915 Act). This will not necessarily now be the case—the alternative accommodation may be in a distant locality if that locality is reasonably near the tenant's work, and suitable as to the nature of the district, &c. Probably, also, the alternative accommodation had to include accommodation for lodgers (cp. *Chiverton* v. *Ede*, (1921) 2 K. B. 30; *Dowling* v. *Butler*, 54 Ir. L. T. 199): it seems doubtful whether this is any longer so, unless the lodger is a member of the family (cp. *supra*, p. 43).

If a husband living apart from his wife takes a house for her and the family, alternative accommodation was not shown because the husband was himself living in a house in which, if his wife returned to him, she might also live (*Crutchley* v. *White*, 36 T. L. R. 249). Nor did it necessarily follow that there is alternative accommodation because the tenant had a house in town in addition to the house of which he was tenant and in which he resided during week-ends (*Flint* v. *Ead*, (1921) W. N. 182). Cp. however, *Cruise* v. *Terrell*, (1922) 1 K. B. 664. These decisions also may possibly require reconsideration in light of the amended wording.

It was decided on the old wording in *Irvine* v. *Nelson* (56 Ir. L. T. Rep. 107 (contrary, however, to *Wilcock* v. *Booth* (122 L. T. R. 678) also on the old Act) that a dwelling-house with no shop combined was no alternative accommodation for a dwelling-house with a shop. This will, it is thought, usually still be the case. See also *Williamson* v. *Pallant*, *post*, p. 50.

This clause only applies where the landlord requires the premises for use as a residence, not, *e.g.*, where he desires to occupy the house for business purposes. But it would apply where the landlord has sublet part of his residence and desires possession thereof for a grown-up son or daughter coming to live with him.

This clause will apparently enable the superior lessor who recovers against his tenant to recover possession also against the sub-tenant of the premises, whether he be sub-tenant of the whole or of part (cp. *Reynolds* v. *Bannerman*, (1922) 1 K. B. 719). But judgment for possession must be obtained against the sub-tenant as well as the tenant (see sub-section 5, *post*, p. 52). Where part is sub-let, as to whether there is any objection to confining the claim against the tenant to the residue of the premises not sub-let, see *Salter* v. *Lask*, (1924) 1 K. B. 754.

Sect. 5]

(e)* the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of *a local authority or statutory undertaking or for any purpose which in the opinion of the court is in the public interest*, and the court *in either case* is satisfied as aforesaid as respects alternative accommodation; or

For statutory undertaking, see sect. 12 (1) (i), and as to alternative accommodation, *ante*, p. 42. See also *ante*, p. 16, for the Housing, Town Planning, &c. Acts, and *Blake* v. *Smith*, *post*, p. 87. Under the original wording the paragraph only applied where the local authority or statutory undertaking was the landlord.

(f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

"Became the" landlord.—Cp. p. 49. See note on p. 50.

"Reasonably sufficient"—*inter alia*, sufficient for lodgers, &c. (*Chiverton* v. *Ede*, (1921) 2 K. B. 30). Where a purchaser without military service, proposing to live with his demobilised son, resold to that son for the express purpose of attracting this clause, it was held that the clause applied (*Kentish* v. *Sneath*, 37 T. L. R. 586). But it does not aid an ex-soldier's executor (*Squier* v. *Hore*, (1921) W. N. 313). "Landlord" includes a tenant who has sublet (*Logan* v. *Fair*, (1922) S. C. 76).

(g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war; *or*

Goodwin v. *Rhodes*, (1921) 2 K. B. 182, has affirmed the view we previously expressed that this gives no power to the former tenant to sue—the action must be by the landlord.

* See note at head of this section.

"Required"—*i.e.*, by the landlord for a former tenant. Clause (f) and not this clause applies where a former tenant sublet and on demobilisation requires possession from the sublessee (*Messenger* v. *Hutton*, (1921) W. N. 101).

(*h*)* *the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let; or*

This was a new clause introduced by the Act of 1923. Since the statutory tenancy is not assignable (*Keeves* v. *Dean*, *post*, p. 86), this clause can only refer to assignments of an existing tenancy, but it will apply where there has been such an assignment after July 21st, 1923, even though there is no restriction on assignment in the lease. Thus, if a seven years' agreement expired at Michaelmas, 1923, and the tenant assigned on August 1st, 1923, the assignee will, after Michaelmas, be within this clause. If the assignment is in breach of covenant, the case falls also within clause (a), *ante*, p. 39. Assuming a statutory tenant cannot sublet, which is doubtful (*post*, p. 87), similar observations apply to sub-lettings. It is curious that this clause was not adverted to in *Keeves* v. *Dean*. This clause, like the other clauses, is subject to the overriding requirement of reasonableness. If lessor's consent was unreasonably withheld, no doubt the Court would refuse possession. The clause, it is thought, probably only contemplates voluntary assignment *inter vivos*.

(*i*)* *the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused;*

This clause also is new and first introduced by the Act of 1923. As to licensed premises, see *Epsom Grand Stand Association, Ltd.* v. *Clark*, (1919) W. N. 170, *post*, p. 71.

* See note at head of this section.

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

"The Court considers it reasonable." It is important to observe (what the form of the sub-section makes it easy to miss) that this qualifies the whole sub-section. See the first note to this sub-section and *Williamson* v. *Pallant* ((1924) W. N. 144, *post*, p. 50) and *Shrimpton* v. *Rabbits* (40 T. L. R. 541).

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this subsection—

Alternative accommodation is only material if clause (d) or (e) is relied on, and as to clause (d) not then if the case is one of the four next specified. *Smith* v. *Bridgen*, (1920) W. N. 106, has no application to the present Act.

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

In this case no alternative accommodation is needed under clause (d), *i.e.*, where premises are let to a servant and on his employment ceasing the premises are required for another employee, alternative accommodation need not be proved. This even if the termination of the tenancy preceded that of the service, if the tenant held over under the Act (*Lever Bros., Ltd.* v. *Caton*, 37 T. L. R. 664). But where service and tenancy terminated before there were any Rent Acts to protect the tenant, but the employee was allowed to remain under a new tenancy, alternative accommodation was required (*Great Northern Ry. Co.* v. *Best*, 55 I. L. T. Rep. 57). See "Law Notes" for June, 1921, p. 151; *Bute* v. *Penderleith* ((1921), Sc. L. R. 290) suggests that where a tenancy is in virtue of service, *e.g.*, where his employer lets a cottage to a gamekeeper, the tenant holding over after termination of service would not be performing the obligations of the tenancy, since this includes rendering service as gamekeeper. *Sed quære.* Cases where there is occupation by a servant without a tenancy must be carefully distinguished, *e.g.*, where a chauffeur is allowed to occupy a dwelling-house adjacent to the garage. Here the servant is not a tenant and is in no way protected by the Act (*National Steam Car Co.* v. *Barham*, 122 L. T. 315; *Bute* v. *Penderleith* (1921), Sc. L. R. 290). The unreported case of *Bond* v. *Pottle* (*Times* Newspaper, Jan. 15th, 1921) is appa-

rently a similar case. Cp. *Ecclesiastical Commissioners* v. *Hilder*, 36 T. L. R. 771, where it was said also the Act would not apply to a tenant at will paying no rent. In cases where there is any doubt whether the occupant is in strictness a tenant, proceedings should not be taken under the Small Tenements Recovery Act, 1838, for should it prove that there is no tenancy, the justices have no jurisdiction. In such cases also a writ claiming ejectment should not be specially endorsed, as this may estop the lessor from denying a tenancy (*Ecclesiastical Commissioners* v. *Hilder*, *ubi sup.*), while in any event, an action for ejectment against a statutory tenant is not a proper case for Ord. XIV. proceedings (*Gill* v. *Luck*, (1923) W. N. 284).

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding; or* *with whom, conditional on housing accommodation being provided, a contract for employment on such work has been entered into; or*

The Court cannot go behind the certificate (*Smith* v. *Primavesi*, (1921) W. N. 291). Cp. as to the concluding words note to para. (d), *supra*, p. 42). For the fees payable on obtaining this certificate, see *post*, p. 129. The Law Society's Council have passed a resolution that this certificate should not be granted by the Ministry without previous communication with the tenant, as is alleged to have sometimes been done ("Law Society's Gazette," May, 1924).

It may be noted in this context that where before the Corn Production Act, 1917 (now repealed), a farmer deducted 1*s.* a week from his labourer's wages in respect of the occupation of a cottage, he was not prevented by this Act from increasing the deduction to 3*s.* a week, inasmuch as the difference of 2*s.* was not deducted by way of rent but as representing a benefit in lieu of cash which for purposes of estimating the minimum wage was to be calculated at 3*s.* (*Baker* v. *Wood*, (1920) W. N. 53).

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

* See note at head of this section.

(iv) *Where the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May,* 1924) *for occupation as a residence for himself or for any son or daughter of his over eighteen years of age and the Court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.*

This clause (iv), introduced into this section by the Prevention of Evictions Act, 1924, replaces two clauses which also were not originally in the section, but were introduced by the Rent and Mortgage Interest Restrictions Act, 1923 (see *post*, pp. 131, 150). Prior to the amendment introduced by this clause, the position was that where a landlord reasonably required possession for his own occupation or that of a son or daughter over eighteen, alternative accommodation was never necessary, the only question being whether it was reasonable to avoid ejectment, and also in cases where the landlord or husband or wife of the landlord did not become so before June 30th, 1922, whether it was greater hardship to make or refuse the order. The position as the Act now stands is as follows:—

Alternative accommodation is essential if possession is sought for purposes of residence by the landlord or his son or daughter over eighteen by a landlord who became so by purchase after May 5th, 1924 (date of the third reading in the Commons of the Prevention of Evictions Act, 1924). In other cases (*e.g.*, where the landlord bought before May 6th, 1924, or acquired after May 5th, 1924, by devise or inheritance), it will not be absolutely essential to prove alternative accommodation, but the Court must consider the balance of hardship, taking into account (*inter alia*) for that purpose the question as to alternative accommodation available not only to tenant but to landlord. In other words, where possession is sought under clause (d) of this section, whether for children or for personal occupation, alternative accommodation will always be a factor for consideration, and where the landlord became so by purchase after May 5th, 1924, it will be an absolutely essential condition, and there will be no jurisdiction to order ejectment unless alternative accommodation is shown. The Court must, of course, also take into account all other circumstances, *e.g.*, that the house comprises shop accommodation, and

that on ejectment the tenant would lose his goodwill (*Williamson* v. *Pallant*, (1924) W. N. 144).

As to "greater hardship," see *Dowling* v. *Butler* (54 Ir. L. T. 199) and *Cruise* v. *Terrell* ((1922) 1 K. B. 664). "Become landlord by purchasing"—whether this refers to the date of the contract or date of completion of the purchase by conveyance is a moot point. The former wording, "became the landlord," was held in *Barrett* v. *Marshall* ((1920) 54 I. L. T. 154) to refer to the contract date, though the decision was perhaps questionable. On the present wording it may be argued that the contract itself makes the purchaser landlord by giving him an equitable "interest" in the premises.

For the effect of the amendment of this clause by the Prevention of Evictions Act, 1924, on judgments already given, see sect. 2 of that Act, *post*, p. 132.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

This sub-section repeats with slight modifications sect. 1, subsect. (2) of the Increase of Rent, &c. (Amendment) Act, 1919. In *Kelly* v. *White, Penn Gaskell* v. *Roberts*, (1920) W. N. 220, it was held on the former Acts that the Court had no power to make an order for possession with "execution stayed as long as the tenant pays rent at the agreed rate" on the ground that the order created a new tenancy of infinite duration, and that the discretion to stay must be exercised judicially, and that while the Increase of Rent, &c. Act, 1915, gave power to grant relief to tenants who paid their rent, the order extended that relief to tenants who did not pay. The relevant provision of the Act, however, corresponding to sub-sect. (2) above, was apparently not called to the Court's attention, while in any case, having regard to the difference in sect. 5 of this Act as compared with the old

provisions to which it corresponds, the decision is perhaps of dubious application to the present Act. No doubt the power to stay execution must be exercised judicially, but an order staying execution indefinitely, if limited to apply only while the present Act is in force, would seem to be within the wording of the sub-section.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

This repeats the Increase of Rent, &c. Amendment Act, 1919, s. 1 (3). Rescission or variation is discretionary, not obligatory (*Taylor* v. *Faires*, 37 T. L. R. 55). See on this sub-section, *Wellesley* v. *White*, (1921) 2 K. B. 204; *Comyn* v. *Leask* (1921), I. L. T. Rep. 13.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888 (51 & 52 Vict. c. 43), or in section one of the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

Under sect. 143 of the County Courts Act, 1888, a warrant for possession, whenever issued, is to bear date on the day succeeding the last day for delivery of possession allowed by the judgment, and shall continue in force for three months from that date and no longer. Under sect. 1 of the Small Tenements Recovery Act, 1838, the warrant for possession must be executed within thirty

clear days of that date. This sub-section provides for an extension of these times.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

Cp. sect. 12 (1) (f) and (g), and sect. 15 (3). Cp. also *Hylton* v. *Heal, ante,* p. 41, and note to sect. 5 1 (d) *ante,* p. 44. There was no express provision before the Act of 1920, but in *Cottell* v. *Baker,* (1920) W. N. 46, where a tenant of premises not falling within the earlier Acts sublet part of the premises as a dwelling-house at a rent which came within the Acts, they were held to protect the under-lessee against the superior landlord. *A fortiori* under the present Act this is so, but subject to the amended sect. 5 (1) (h). Under the old Acts, however, it was necessary that the under-lease should not be a breach of covenant (*Dick* v. *Jacques,* 36 T. L. R. 773; *Cottell* v. *Baker, ubi sup.*). (This last case also decides, following earlier authority, that a sub-lease of part is not a breach of covenant against subletting the whole premises.) Under this section, the words "lawfully sublet" seem to point to a similar result, though in terms the section only deals with the effect of a judgment against the sublessor, and even a sublessee in breach of covenant is within the words of sect. 12 (1) (f) and (g). It must be remembered that under the Conveyancing Act, 1892, the sublessee may possibly be relieved from the forfeiture (*Hurd* v. *Whaley,* (1918) 1 K. B. 448, and cases there cited). As to relief from forfeiture, see also *Brewer* v. *Jacobs, ante,* p. 40. Cp. also as to this section, *Murphy* v. *Porter,* 53 I. L. T. 151.

Where the tenant delivers up possession but the sub-tenant holds over under the Act, no liability attaches to the tenant (*Reynolds* v. *Bannerman,* (1922) 1 K. B. 719). But if the tenant himself surrenders possession and ceases to be a statutory tenant, he is liable in damages for failure to give vacant possession (whether under express covenant to do so or not) where the holding over is by someone claiming under him (*e.g.*, a caretaker) not entitled to hold as statutory tenant (*Henderson* v. *Van Cooten,* (1922) W. N. 340). It has been held that a lessee's covenant not to permit the premises to be used except as a private dwelling-house is not broken where sublessee is under a similar covenant and in breach of covenant sublets the different floors as weekly tenements, if the

lessee enforces the forfeiture against his sublessee but does not proceed against the weekly tenants, being advised that the Act would afford them a defence (*Berton and Others* v. *Alliance Economic Investment Co.*, (1922) 1 K. B. 742). Cp. *Atkin* v. *Rose*, (1923) 1 Ch. 522. The sub-lessee continues protected by the Act though the lease is forfeited by the sub-lessor's breach of covenants in the head lease (*Ward* v. *Larkins*, (1923) W. N. 189).

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order* *or judgment* was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

See note to next sub-section.

(7) **The provisions of the last preceding subsection shall apply in any case where the landlord has, after the thirty-first day of July, nineteen hundred and twenty-three, obtained an order or judgment for possession or ejectment on any of the grounds specified in paragraph (d) of subsection (1) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation by the landlord to the former tenant, direct that the dwelling-house shall not be excluded from this Act by reason of the landlord having come into possession thereof under the said order or judgment, and if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction.*

As to decontrol through the landlord's coming into possession, see Rent and Mortgage Interest Restrictions Act, 1923, s. 2, *post*, p. 115, where this sub-section is further dealt with.

* See note at head of this section.

It has been suggested by his Honour Judge F. E. Bradley ("Law Quarterly Review," October, 1923, p. 457) that an ejectment order made on the grounds specified in this or the preceding sub-section might desirably be prefaced with a statement that it is based on these grounds, thus, if necessary, facilitating proof later that these sub-sections apply.

6. *Restriction on levy of distress for rent.*—No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession:

The Court will have the same powers in respect of applications for leave to distrain as are mentioned in sect 5 (2), *ante*. In exercising this power the Court should take into account the other provisions of the Act, and whether there is a *bonâ fide* dispute as to the amount legally payable. See *Townsend* v. *Charlton* ((1922) 1 K. B. 700) for a discussion of the principles upon which the Court should act.

Provided that this section shall not apply to distress levied under section one hundred and sixty of the County Courts Act, 1888.

Sect. 160 of the County Courts Act, 1888, provides in substance that on a County Court execution, if the landlord gives notice to the bailiff that rent is in arrear, the bailiff is to combine distress with the execution, and before payment to the execution creditor deduct for the landlord's benefit four weeks' rent in the case of weekly lettings, rent for two terms of payment if the letting is for less than a year, and rent for one year in other cases.

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

Of the provisions in question the only ones repealed by this Act are sects. 4, 5 and 7 of the Courts (Emergency Powers) Act,

1917, which were amendments of the provisions of the former Increase of Rent, &c. Acts, and were superseded by the provisions of the present Act. But the Courts (Emergency Powers) Acts expired on August 31st, 1922.

7. *Restriction on calling in of mortgages.*—It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(a) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear; and

(b) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

(c) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance,

to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

The retention of rents by a mortgagee in possession is not a payment of interest within this provision, nor will the property be deemed to be repaired because the mortgagee might have repaired it out of the rents (*Walters* v. *White*, 33 T. L. R. 154). The "proper state" of repair is ascertained by reference to the state of repair at the date of the mortgage (*Woodifield* v. *Bond* (*No.* 2), (1922) 2 Ch. 40, followed in *Hutchinson's Trustee* v. *Downie's Trust* ((1923) Scotch L. T. Rep. 49). It was held in *Hollands* v. *Cooper* ((1921) W. N. 298) that even where the increase took place before March 25th, 1920, and was valid when made, this section prevented the mortgagee foreclosing as long as interest was paid at the rate specified in sect. 4. The decision is not altogether easy to follow. See "Law Notes," December, 1921, p. 293, and further reference to this case, *ante*, p. 36.

The language of this sub-section is very wide. In cases where it applies a notice calling in a mortgage will be inoperative to enable mortgagee to sell, and any purported sale void. The mortgagor might, no doubt, obtain a declaration that the notice is invalid, and with an order for costs, but there is no need to take proceedings. A purchaser from the mortgagee would not get a good title if the mortgagor had fulfilled the conditions set out in the section. And a mortgagee under this sub-section cannot even commence foreclosure proceedings,

or continue proceedings begun before the Act was introduced (*Welby* v. *Parker*, (1916) 2 Ch. 1), or sue on the covenant for repayment (see, *e.g. London County and Westminster Bank* v. *Tompkins*, *post*, p. 77). The sub-section also prevents the mortgagee from taking possession from the mortgagor, though not from a second mortgagee (*Kirk* v. *Cunnington*, as reported 37 T. L. R. at p. 938), and he cannot eject a tenant of the mortgagor though the tenancy is void as against the mortgagee (*Martin* v. *Watson*, (1919) 2 Ir. R. 332; see also sect. 12 (1) (f)). And it may prevent the appointment of a receiver, though such an appointment is not within the mischief of the Act, and the point is arguable. It is not of great importance, since the happening of an event to make the power of appointing a receiver exercisable under the Conveyancing Act will nearly always take the case out of this sub-section altogether.

In cases where the mortgage contains an attornment clause there may be a question as to whether the mortgagor can claim any protection in his capacity of tenant (the question will only arise if he attorns tenant at a sufficiently high rent (sect. 12 (7)). At any rate, if the mortgage is since the Act, so that the mortgagor is not protected as such, there seems no reason why he should not claim protection as tenant.

A mortgagor in possession is apparently protected as of course (*Woodifield* v. *Bond* (No. 1), (1921) W. N. 309, *post*, p. 70).

Provided that—

(i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was on the twenty-fifth day of March nineteen hundred and twenty a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and

(ii) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise

him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

As to sales by mortgagees, cp. further, *post*, p. 63.

The practical effect of sect. 19 of this Act, and sect. 38 of the Interpretation Act, 1889, is, it would seem, to substitute for 25th March, 1920, the date 25th November, 1915, as to houses which were within the 1915 Act, and 4th March, 1919, as to those within the 1919 Act. For as to those houses these repealed Acts would usually have operated to prevent possession being taken, and even if possession has in fact been taken in defiance of their provisions, so that in fact the mortgagee was in possession on March 25th, 1920, yet it would appear questionable whether the proviso is applicable so as to authorise a valid exercise of the power of sale. *Provident Association of London and Gallogally's Contract* ((1917) 1 Ir. R. 240), however (a case on similar provisions in the repealed Courts Emergency Powers Acts), apparently assumes the power would be validly exercised.

Even where the mortgage is payable by instalments as stated, or the mortgagee is in possession, sect. 1 applies, and the rate of interest cannot be raised, though the mortgagee is not restrained from selling, foreclosing, &c. The Courts (Emergency Powers) Act, 1914, expired on August 31st, 1922, but may in some cases have made it necessary for the mortgagee to obtain the Court's leave to sell, &c., though this Act did not. This legislation, like the present Act, did not apply to sales by mortgagees in possession, and a mortgagee who had appointed a receiver who was still acting was for this purpose deemed to be in possession (Courts (Emergency Powers) (No. 2) Act, 1916, s. 1 (1)). Cp. *Re R. W. Hill, Ltd., and Simmons' Contract*, (1920) W. N. 386. But there is no corresponding provision here, and the mere fact that a receiver was appointed before March 25th, 1920, will not take the case out of this Act.

Unlike the Courts (Emergency Powers) Act, 1914, s. 1, which, except in the case of officers and men of His Majesty's Forces (including the recently demobbed—War Emergency Laws (Continuance) Act, 1920), only applied to mortgages created before the war, this section applies to mortgages created at any time before the 2nd July, 1920.

From the mention in this saving clause of the power of sale only, it was argued in *Walters* v. *White*, 33 T. L. R. 154, that in the case of a mortgage to which the Act applies the remedy of a mortgagee in possession is now limited to selling. Sargant, J., however, held that the saving clause was only inserted *ex abundanti cautela*, and had not this effect. A mortgagee in possession can foreclose, just as a mortgagee not in possession may foreclose, if the mortgagor has not fulfilled the conditions necessary to give him the protection of this section. And the same remark applies to the mortgagee's other remedies.

The second clause of the proviso obviates a hardship that might otherwise arise where money has been lent on leaseholds, and by lapse of time the term is likely to become too short to be a sufficient security for the amount advanced.

8. *Restriction on premiums.*—(1) A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the twenty-fifth day of March nineteen hundred and twenty, the amount or value thereof shall be recoverable by the person by whom it was made or given:

Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order

shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

This section is aimed at the institution of "key money." An agreement falling within this section is not enforceable, and any such payment made or consideration given can be recovered either by suing the landlord, by deduction from rent (sect. 14), or in the manner specified in sub-sect. (2) of this section. The section follows very closely the wording of sect. 1, sub-sect. (2) of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, but is wider in that it includes sub-tenancies, and applies not only to the payment of fines, &c., but the giving of any consideration. The section loses a good deal of its importance now that the landlord's actual possession in itself may bring about decontrol under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (1) (*post*, p. 112). Moreover, it does not apply to premiums on a lease falling within sect. 2 (2) of that Act (*Bell* v. *Steel*, "Estates Gazette," July 12th, 1924). As to the meaning of "fine, premium, or other like sum," cp. *Sharp Brothers and Knight* v. *Chant*, *post*, p. 83. For circumstances connected with a tied house held not within this section, see *Brakspeare* v. *Barton*, (1924) 2 K. B. 88. As to the case where the grant of a tenancy is made conditional on the purchase by the tenant of fixtures at an exorbitant figure, see the Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 122.

The language of sub-sect. (2) is consistent with the mere demand of a premium amounting to an offence, though on the other hand the provision being penal is to be strictly construed, and it is arguable that the concluding words contemplate that the demand shall have been complied with by the tenant or sub-tenant. Cf. the language of sect. 15, sub-sect. (2). The view expressed in former editions that the sub-section does not apply to "key money" except where required by the landlord or sub-lessor, was affirmed in *Remmington* v. *Larchin*, (1921) 3 K. B. 404, and *Mason, Herring and Brooks* v. *Harris*, (1921) 1 K. B. 653. Nor does this section cover a premium to lessor on his consenting to an assignment (*Strathern* v. *Beaton* (1923), 59 Sc. L. R. 559). The decisions of a Divisional Court in *Katsman* v. *Barnett* ("Estates Gazette," March 15th, 1924) and *Reuben* v. *Larsen* (unreported, but referred to in the last case) seem to favour a contrary view, but if so it is submitted the Scotch decision is preferable. As to premiums exacted by a lessee, see sect. 15 (2), *post*, p. 87.

The third sub-section meets such a case as *Rees* v. *Marquis of Bute*, (1916) 2 Ch. 64, where a scheme, genuinely designed and

adapted for the improvement of the position of the Marquis' tenants, under which they were to receive long leases at a reduced rent in consideration of a money payment, fell through owing to the impossibility under the Act of 1915 of compelling payment of the premium. Independently of this sub-section, the case seems now covered by the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (1), *post*, p. 112.

9. *Limitation on rent of houses let furnished.*—(1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit more than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee.

(2) For the purpose of this section, "normal profit" means the profit which might reasonably have been expected from a similar letting in the year ending on the third day of August nineteen hundred and fourteen.

In this section "Lessor" and "lessee" must now be read as "Landlord" and "tenant." (Rent and Mortgage Interest Restrictions Act, 1923, s. 10 (2).)

This section (which is practically a repetition of sect. 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919) only applies to dwelling-houses which, apart from the fact of their being let furnished, would fall within the Act, having regard to their rent and rateable value—at least this seems to be the effect, though the words "dwelling-house to which this Act applies" are not very apt for the purpose, since the Act does not, apart from this section, apply to houses let furnished. It may be indeed that on a strict interpretation this section has no application unless the house was on 3rd August, 1914, or has since been let unfurnished, and does not apply where there has never been a letting on 3rd August, 1914, or thereafter.

The section does not bring furnished houses within the general provisions of the Act. No additional security of

tenure (except so far as sect. 10, *infra*, may so operate) is given the tenant of a furnished dwelling-house, *e.g.*, if he holds as weekly tenant the landlord can determine the tenancy by notice and the tenant must go—there is nothing to prevent the landlord suing for possession; the section only enables the County Court to invalidate a claim for rent beyond the specified limits during such period as the letting endures.

"After the passing of this Act," *i.e.*, 2nd July, 1920. The section applies whenever the tenancy commenced, but only applies to excess rent paid in respect of a period after that date, and this is now subject to the time limit under sect. 8 of the Rent and Mortgage Interest Restrictions Act, 1923.

The definition of normal profit may give rise to difficult cases. In the case of a furnished house at the seaside, *e.g.*, the rent and profit obtainable vary considerably according to the time of year. The words "similar letting" apparently involve a July let of 1920, or some later year, being compared with a July let of 1914.

In *Truss* v. *Olivier*, 40 T. L. R. 588, it was said the correct principle is to ascertain the 1914 normal profit of a furnished let, and then ascertain what rent would, allowing for the rise in prices, &c., produce that profit with an additional 25 per cent.

Cp. note to sect. 12, sub-sect. (2), proviso 1, *post*.

10. *Penalty for excessive charges for furnished lettings.*—Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the lessor shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

"Lessor" and "lessee" are here also to be read as in the last section (*ante*, p. 60).

Under this Act as it originally stood, houses let at a rent includ-

ing payments for the use of furniture were excluded and there was room for this section to operate.

Sect. 10 of the Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 122, goes far to empty this section of effect, since, in cases where it could apply the tenant will now usually be able to limit his rent by reference to the standard rent.

11. *Statement to be supplied as to standard rent.*—A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds.

In this connection it is important to bear in mind the definition of standard rent (sect. 12 (1) (a), *post*, p. 63) and to observe that such rent is not necessarily that actually payable by the tenant, which may be a higher figure and include the permitted increases under this Act. In such cases the convenient thing would be for the landlord to state the standard rent and add particulars as to the increase made. The tenant making a written request under this section would be prudent to obtain the landlord's signature to a duplicate copy or otherwise provide evidence on the point.

It is, perhaps, a defect that only tenants get the benefit of this provision. A purchaser also is vitally concerned to know the standard rent—he will himself otherwise be unable to comply with this section (though, no doubt, he will have "reasonable excuse") or to know the rent he may himself properly exact. This section, however, gives him no right to the information, and whether he is entitled to it independently will probably depend on the terms of the contract and the circumstances generally.

It may be noted here that the effect of the Act with regard to purchasers requires consideration. Where the purchaser is entitled to vacant possession, the existence of a statutory tenant will be ground for refusing to complete. But where a contract with no special provision as to vacant possession was entered into before the principal Act was passed, the vendor was granted specific performance notwithstanding that a statutory tenancy had come into existence before completion (*Matthews* v. *Walker*, "Estates Gazette," April 10th, 1923). *A fortiori*, as to contracts since the Act. In the case of a purchase from a mortgagee, *e.g.*, selling under his statutory power of sale, it will presumably be incumbent

on vendor to show either that rent and rateable value take the property outside the Acts, or that, *e.g.*, by reason of the mortgagee having been in possession at the material date, the power of sale is not affected, and a statement showing the Acts to be inapplicable should form part of the abstract in such cases. As to the material date of possession, see remarks on *Provident Association of London and Gollogally's Contract, ante*, p. 57. The purchaser will be entitled to evidence of this, though if that evidence (*e g.*, a statutory declaration) be not already in vendor's possession, purchaser can only require it at his own expense (*Re Wright and Thompson*, (1920) 1 Ch. 191).

APPLICATION AND INTERPRETATION OF ACT.

12. *Application and interpretation.*—(1) For the purposes of this Act, except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent;

In considering the standard rent, it must be borne in mind that the following cases are exceptionally treated.

(1) Where at the critical date the rent was less than the rateable value at that date. Here the rateable value at that date will be the standard rent unless the case falls within sub-sect. (7), *post*, p. 79, which deals with cases where the rent is less than two-thirds of the rateable value.

(2) Cases of a progressive rent where the standard rent will be the maximum payable.

A progressive rent means a rent which is periodically increased, not, *e.g.*, an agreement for a tenancy at a rent which is to be at a higher figure during the last year of the tenancy. Here the rent is one which is definitely increased once only for a particular period of twelve months, and therefore it is not a progressive rent within the section (*Goldsmith* v. *Orr*, (1920) W. N. 250). Where premises are let for a term with an option to renew from time to time, the rent increasing each time the option is exercised, this is not a case of progressive rent (*Pond* v. *Barber*, "Estates Gazette," June 9th, 1923).

(3) Cases of houses erected after or in course of erection at 2nd April, 1919. These are not within the Act, and have no standard rent (sub-sect. (9), *post*, p. 80).

(4) Cases of reconstructed houses. If the reconstruction falls within sect. 12 (9), the house will not be within the Act and will have no standard rent, otherwise the house will be still within the Act, but the reconstruction, while not sufficient to satisfy sect. 12 (9), may in some cases make the house sufficiently a new one to constitute first letting after the date of reconstruction the critical date by which to decide the standard rent (see *post*, p. 75).

As to standard rent generally.—Where lessor agrees to pay the rates the amount of the rates cannot be deducted for the purpose of computing the standard rent (*Westminster and General Properties Investment Co.* v. *Simmons*, (1919) W. N. 241; *Isaacs* v. *Titlebaum*, (1920) W. N. 29; *Laurie* v. *Woods*, (1920) 2 I. R. 106. Cp. *Mackworth* v. *Hellard*, (1921) 2 K. B. 755, *post*, p. 79). Nor is anything to be deducted because the rent includes a contribution towards cleaning expenses (*Wood (L. M.) & Co., Ltd.* v. *City and West End Properties, Ltd.*, 38 T. L. R. 98). In the case of a public-house a tie (and as a consequence, a discount on the price of goods bought under the tie clause) is irrelevant for purposes of calculating the standard rent (*Brakspeare* v. *Barton*, (1924) 2 K. B. 88). Where a tenant of a house in which he was living at a rent of 19*l.* bought the house in 1908, and resided in it till 1918, when he let it at 34*l.* a year, the standard rent was 19*l.* (*O'Neill* v. *Duncan* (1921), Ir. L. L. T. Rep. 84).

Where a house is sublet in tenements it is not permissible to aggregate the rents of the different subleases for the purpose of obtaining the standard rent of the whole. If the tenant's own rent is less than two-thirds of the rateable value, since this cannot be the standard rent (sub-sect. 7, *infra*), in the absence of evidence of a previous letting at a higher rent, the standard rent is that at which the house is first let after the lease has expired (*Veale* v. *Cabezas*, (1921) W. N. 311). The cases seem to establish that in

the absence of evidence to the contrary the latest rent fulfilling the requisite conditions will be presumed to be the standard one (*Tarrant* v. *Burston*, "Estates Gazette," May 3rd, 1924).

Where a public-house was, in August, 1914, sub-let as a tied house at a rent of 24*l.* per annum by a tenant who himself held free of any tie at a rent of 130*l.*, it was held on the expiration of the lease that the standard rent was 24*l.* and not 130*l.* (*Glossop* v. *Ashley*, (1921) 2 K. B. 451, affirmed (1922) 1 K. B. 1). Reference should be made to this case for a discussion of the difficult questions connected with standard rent where there has been a sub-letting. In many cases the standard rent will be obtained by a process of apportionment (sub-sect. 3, *post*, p. 74).

The proviso to this clause contains two separate provisions. Where at the critical date rent was less than the rateable value the rateable value will be the standard rent, even though the rent was not progressive (*Glossop* v. *Ashley*, (1921) 2 K. B. at p. 460).

(b) The expression "standard rate of interest" means, in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

"Standard rent" attaches to the particular property: "standard rate of interest" does not, but may vary with each successive mortgage thereon. It is thought that where there is a covenant to pay at a rate reducible on punctual payment the lower rate is the standard rate.

If on August 3rd, 1914, there was a mortgage on a small dwelling-house carrying interest at 4 per cent. and that mortgage has been paid off and a fresh mortgage given which carries interest at 5 per cent., the standard rate is 5 per cent. and not 4 per cent. But the Act will, of course, apply to the new mortgage unless created after the passing of this Act (sub-sect. (4) (c) of this section, *infra*), and protect the mortgagor on the basis of the new standard rate of interest.

The application of this provision in the case of a transfer of a mortgage is not very clear. Suppose that A. is the owner of property coming within this Act, which at the outbreak of the war was in mortgage to B. at 5 per cent. B. called in his mortgage and A. arranged with C. to pay B. off and take a transfor of the mortgage, the rate of interest, however, to be in future $6\frac{1}{2}$ per cent. A. joins in the transfer and gives

a fresh covenant to pay 6½ per cent. interest, and a new proviso for redemption is inserted. If all this happens after the critical date, March 25th, 1920 (or as to 1915 Act Houses August 3rd, 1914, or 1919 Act Houses December 25th, 1918), must A. now pay 6½ per cent.? Is the existing mortgage a mortgage which was in force on that date, or a mortgage created since that date? The latter, we think, the transfer being only a conveyancing device to effect what is really a new mortgage.

(c) The expression "net rent" means, where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent;

Cp. sect. 2, sub-sect. (1) (c) and (d). "Less the amount of such rates," *i.e.*, less the amount actually paid by the landlord after deducting the commission allowed on compounding. (See judgment of Scrutton, L.J., in *Nicholson* v. *Jackson*, 36 T. L. R. 854, deducing this from the majority decision in the Court of Appeal, which was affirmed on appeal to the Lords. Cp. on this context, *Highfield* v. *Griffin*, *ante*, p. 29.) The rates to be deducted are, of course, the 1914 rates, or such other time as regulates the standard rent.

(d) The expression "rates" includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded;

See *ante*, p. 32, for the effect of this last clause.

(e) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed;

As to Ireland, see sect. 18, *post*, and *Allen* v. *Inspector-General R.I.C.* (1920), 54 Ir. L. T. 119. As to England we stated in the eighth edition that rateable value probably means the net rateable value and not the gross value. This view has now been confirmed by *Waller & Son* v. *Thomas*, (1921) 1 K. B. 541.

(f) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor;

(g) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court;

The expression "landlord" will thus cover a purchaser. On a sale with vacant possession, if the tenant takes advantage of the Act, it would appear that purchaser may rescind. (See, however, further, as to purchasers, *ante*, pp. 49, 62.)

Cp. as to "tenant" judgments in *Hylton* v. *Heal*, (1921) 2 K. B. at 445; *Remon* v. *City of London Real Property Co.*, (1921) 1 K. B. 49; *Taylor* v. *Faires*, 37 T. L. R. 55, and note, after sect. 5 (1), proviso 1, *ante*, p. 47.

The lessee of a mortgagor claims under him and gets the benefit of the Act as against the mortgagee, though the lease be void as against the mortgagee (*Martin* v. *Watson*, (1919) 2 Ir. R. 332). "Tenant" may include the executor (*Collis* v. *Flower*, *post*, p. 86) and administrator (*Mellows* v. *Low*, (1923) 1 K. B. 522). See note on these decisions, *post*, p. 86. But a bankrupt tenant is not within the Act, for the statutory tenancy vests in the trustee and ceases if the trustee has disclaimed the lease (*Reeves* v. *Davies*, (1921) 2 K. B. 486: *Parkinson* v. *Noel*, (1923) 1 K. B. 117).

A lease to a man "as long as he likes" is equivalent to a life estate and no increase of rent is possible (*Barraclough* v. *Taylor*, "Estates Gazette," 27th January, 1923). As to whether "tenant" includes a tenant at will, see note to sect. 5, *ante*, p. 48, where also it is pointed out that tenant does not include one permitted "service occupation."

The concluding words of clause (g) dealing with "tenant" do not cut down the effect of the preceding paragraph (f), and only apply where there being no administrator, paragraph (f) is inapplicable (*Mellows* v. *Low,* (1923) 1 K. B. 522). This is so even where deceased was himself a statutory tenant (*ibid.*).

"Tenant" includes an "assignee" of the original tenancy, but not the assignee of one already a statutory tenant (see *Keeves* v. *Dean; Nunn* v. *Pellegrini* (reported together, (1924) W. N. 6). For the prejudicial effect of assignments, see *ante,* p. 46. As to the case where there is a covenant against assigning, cp. *Cottell* v. *Baker, Dick* v. *Jacques, ante,* p. 52. As to sub-leases, see *ante,* p. 44, and *post,* p. 86. See, also, as to the position of sub-lessees, *Dick* v. *Jacques* (*supra*) and *Glossop* v. *Ashley* (*ante,* p. 65).

"Member of the tenant's family," see note to sect. 5 (1) (d), *ante,* p. 43.

(h) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 (38 & 39 Vict. c. 87) and 1897 (60 & 61 Vict. c. 65);

(i) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed—

(a) in the metropolitan police district, including therein the City of London, one hundred and five pounds;

(b) in Scotland, ninety pounds; and

(c) elsewhere, seventy-eight pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies:

Provided that—

(i) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house bona fide let at a rent which includes payments in respect of board, attendance, or use of furniture; and

(ii) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes; and

(iii) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one quarter of the rateable value of the house, be treated as part of the house, but subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.

This sub-section requires careful qualifying by reference to the Rent and Mortgage Interest Restrictions Act, 1923, especially sects. 2 and 10 thereof. Sub-sect. (6) of this section must also be carefully borne in mind.

For information as to the Metropolitan Police District, see Metropolitan Police Guide, 7th edition (1922), p. 32.

For the purpose of the Act a house may, and in practice often does, consist of a flat or even of a single room (cp. sub-sect. (8), *infra*). On the other hand, the Act will not, as a rule, apply to lodgers, for there is in strictness no letting. The term "lodger," however, is sometimes loosely used to include persons in whom is vested an actual interest in the premises and whom, therefore, the Act would protect. As to furnished dwelling-houses, see *ante*, p. 13.

Where two or more houses or sets of chambers are included in the same tenancy, the combined rent and rateable value must be taken—the Act will not apply simply because the rateable value or apportioned rent of the chambers taken separately is within the specified figures (*Rider* v. *Rollit*, (1920) W. N. 227).

The section provides two independent *criteria*. It will apply (1) if the standard rent does not exceed an amount which varies with the locality, or (2) if the rateable value does not exceed that amount. In other words, to be outside the section both rent and rateable value must be above the stated amount. The amount is treble the corresponding amount under the original Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915. For definition of rateable value, see sub-sect. (1) (e).

In general, whether the premises fall within the Act must be tested by the position of the occupying tenant. If the premises are sub-let, it is the sub-tenancy and not the superior tenancy which is the critical factor (see *Glossop* v. *Ashley*, (1922) 1 K. B. 1; *Prout* v. *Hunter*, 157 L. T. News. 302). But the language of the

Court of Appeal in the first case is very guarded, and the application of the Act to sub-lessees is full of difficulties hardly yet fully explained by the Courts.

It was held (but in reference to mortgages and without much consideration of the position as between landlord and tenant) by Sargant, J., in *Woodifield* v. *Bond* (No. 1), (1921) W. N. 309, "let as a separate dwelling" qualify only "part of a house" and not "house"—though the language of previous judgments suggests the contrary (cp. *Epsom Grand Stand Association, Ltd.* v. *Clarke,* (1919) W. N. 170; *Callaghan* v. *Bristowe,* 36 T. L. R. 841) —and even apart from this, the Act seems calculated to affect only premises which are let (cp. *National Steam Car Co.* v. *Barham, ante,* p. 48). *Woodifield* v. *Bond* is referred to somewhat doubtfully in *Greig* v. *Francis Campion & Co.*, 38 T. L. R. 519. For further discussion of this matter, see the cases on premises including business accommodation, *post,* p. 82. As a consequence of the view taken in *Woodifield* v. *Bond* (*ubi sup.*), it was held that the Act protects a mortgagor, though in personal occupation of the premises and though there has been no previous letting thereof. There is a contrary decision in Ireland (*Re Hegan,* (1921) Ir. R. 189). Whether in any case the house is not now decontrolled in virtue of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, is arguable. "Landlord" in that section is not very apt to cover the mortgagor (cp. *post,* p. 115).

Houses for the first time affected by the present Act, even if the tenancy expired before the coming into operation of the Act, are, it was suggested in a previous edition, and is now decided, protected (*Remon* v. *City of London Real Property Co.*, 36 T. L. R. 869, and see *Dobson* v. *Richards,* (1919) W. N. 166).

Clause (*i*) *of the proviso.* "Save as otherwise expressly provided," *e.g.*, as to furniture, sects. 9 and 10. There appears to be no express provision as to lettings including board and attendance.

In *Prout* v. *Hunter* (157 L. T. News. 302) it was held that where premises are sub-let furnished this clause applies, and no protection exists under the Act even though the premises are let unfurnished as between the superior landlord and the original lessee. The test in this respect is the position of the occupying tenant. (The decision is somewhat difficult to follow, since in the actual case apparently only a part was sub-let. Nor was sect. 12 (6) referred to.)

This clause was held (in *Wood* v. *Wallace,* 65 S. J. 135) to apply only where there is an inclusive rent, *e.g.*, where a flat was let at a given figure with a clause by which tenant was to pay a weekly sum for board, attendance, or use of furniture, this sum was held no part of the rent either for calculation of the amount of the rent or for the purpose of this proviso (*Wood* v. *Wallace,*

65 S. J. 135). Similarly, where a further sum was agreed to be paid payable and receivable as rent (*Hocker* v. *Solomon,* 91 L. J. Ch. 8; *Ellen* v. *Goldstein,* 123 L. T. R. 644). In *Wood (L. M.) & Co., Ltd.* v. *City and West End Properties, Ltd.,* 38 T. L. R. 98, however, a weekly contribution to cleaning expenses "to be recoverable by distress" was treated as part of the rent for the purposes of calculating standard rent; and the principle of *Wood* v. *Wallace* was doubted by the Court of Appeal in *Wilkes* v. *Goodwin,* (1923) 2 K. B. 86, where the matter is discussed. See also *Rimmer* v. *Carson,* 39 T. L. R. 349; *Crane* v. *Cox,* (1923) W. N. 41. In *Nadler* v. *Wilson* (40 T. L. R. 639), where an addition of 5*s.* per week for attendance on a rent of 74*l.* was to be paid quarterly in one payment, it was held to exclude the premises from the Act. As to furniture, the words are "payments in respect of use of furniture," and cases where the tenant is required to buy will fall not under this section but under sect. 8, *ante,* p. 58, as amended by the Rent and Mortgage Interest Restrictions Act, 1923, s. 9, *post,* p. 121. Furniture (as distinct from fittings and fixtures) suffices to satisfy this proviso if sufficiently substantial in amount to exclude the rule *de minimis* (*Wilkes* v. *Goodwin,* (1923) 2 K. B. 86, where the matter is discussed by the Court of Appeal and reference made to the unreported *Burns-Wallace* v. *Hardingham*). An agreement to let "partially furnished" does not necessarily take the case out of the Act unless the furniture is sufficient in fact for that purpose (*Rimmer* v. *Carson,* 39 T. L. R. 349). A gas cooker, blinds, gas fire, cornice poles and gas brackets are fixtures, not furniture (*Crane* v. *Cox,* (1923) W. N. 41), though linoleum comes under that head. Cases, however, on the quantum of furniture required by this section are not now important, since the Act will apply unless the quantity of furniture satisfies the Rent and Mortgage Interest Restrictions Act, 1923, s. 10, *post,* p. 122.

"Attendance" has been discussed by the Courts in connection with service tenancies of flats in *Nye* v. *Davis,* (1922) 2 K. B. 56; *King* v. *Millen,* (1922) 2 K. B. 247; *Wood* v. *Carwardine,* (1923) 2 K. B. 185; *Dick* v. *Duncan,* (1923) W. N. 90; and *Michael* v. *Phillips,* (1924) 1 K. B. 52. These cases, like those on furniture, are not easy to reconcile in every respect, but the general result is that any attendance sufficed if it was of a personal character and not so trivial as to fall within the *de minimis* rule. But these cases as to attendance are of small importance since sect. 10 of the Rent and Mortgage Interest Restrictions Act, 1923, under which attendance is immaterial unless the value thereof amounts to a substantial portion of the rent.

Clause (ii) of the proviso is statutory confirmation of *Epsom Grand Stand Association, Limited* v. *Clarke,* 35 T. L. R. 525, where licensed premises used also for residence were held to be within the previous Acts. Such premises are in virtue of this clause also within the present Act (*Waller & Son, Ltd.* v. *Thomas,*

(1921) 1 K. B. 541). Generally the result is that premises may be a dwelling-house within sect. 12 and protected under that section, though part of the premises are used for business purposes, and the protection given to business premises as such by sect. 13 of this Act has now lapsed. Whether premises comprising business and shop accommodation fall within the Act in virtue of this sub-section appears to depend on the purpose for which they were let, and not the actual user or intrinsic character of the premises. "If an agreement were to let premises as a barn, the tenant though he lived there could not be heard to say that they were let as a dwelling-house," per Bankes, L. J., in *Epsom Grand Stand Association* v. *Clarke,* as reported (1924) W. N. 170. It would appear to follow (though no actual decision goes quite so far) that if a barn were let expressly for use as a residence it would fall within the protection of the Act. The general principle established by the *Epsom Case,* which was decided on the Act of 1915, has been adopted by later decisions on the similar language of the present Act, and appears firmly established, even if it is perhaps hardly consistent with *Woodifield* v. *Bond* (No. 1) (*ante,* p. 70), where the words of this sub-section, "let as a separate dwelling," were held to qualify only "part of a house" and not "house."

Whether, then, the Act applies will depend on the terms of the letting, and it seems that the Act will be applicable if the letting is for the purpose of residence even in a minor degree and though the dominant purpose of the letting is for use of business premises. This view was taken in *Waller & Son, Ltd.* v. *Thomas,* where McCardie, J., in spite of a personal preference for dominant user, felt himself bound by the Court of Appeal decision in the *Epsom Case.* To a similar effect is the judgment of the same judge in *Brakspeare* v. *Barton,* (1924) 2 K. B. 88. Dominant user was also rejected in *Cohen* v. *Benjamin,* 39 T. L. R. 10.

In some cases language consistent with "dominant purpose" has been used (*Callaghan* v. *Bristow,* 36 T. L. R. 841; *Greig* v. *Francis Campion & Co.*, 39 T. L. R. 519), but apparently without intentionally questioning the rule as formulated in the *Epsom Case.* On the other hand, there is much to be said on juristic grounds for "dominant purpose" of the letting, and it is perhaps open to the Court of Appeal to reconsider the point.

The following have been held within the Act:—Public-houses (*Epsom Grand Stand Association* v. *Clarke,* (1919) W. N. 170; *Waller & Son* v. *Thomas,* (1921) 1 K. B. 541; *Brakspeare & Sons, Ltd.* v. *Barton,* 40 T. L. R. 607); house with shop attached (*Greig* v. *Francis Campion & Co., Ltd.*, 38 T. L. R. 519; *Cohen* v. *Benjamin,* 39 T. L. R. 10); garage with living accommodation over (*Callaghan* v. *Bristow,* (1920) W. N. 308); temperance hotel (*Burns* v. *Radcliffe,* (1923) 2 Ir. R. 158); house used for

letting to lodgers (*Colls* v. *Parnham*, (1922) 1 K. B. 325 (*Tompkins* v. *Rogers*, (1921) 2 K. B. 94, and *Earle* v. *Bradley*, "Estates Gazette," Oct., 1921, p. 325, cannot be relied on as showing the contrary since the criticisms of *Tompkins* v. *Rogers* in other cases); premises used for sleeping accommodation of an hotel staff (*Duke of Richmond* v. *Dewar and Cadogan Hotel Co., Ltd.*, 38 T. L. R. 151); premises let to a local authority with residence for surveyor (*West* v. *Wrotham U.D.C.*, "Estates Gazette," Oct. 20th, 1923); premises let as a dwelling-house, but user for residence in fact abandoned and premises used for storage (*Sanderson* v. *Gibbons*, "Estates Gazette," April 19th, 1924).

Cases held not within the protection of the Act are:—Premises expressly let for business purposes, but in breach of contract used for residence (*Williams* v. *Perry*, (1924) 1 K. B. 936; *Cook Bros.* v. *Rogers*, "Estates Gazette," Aug. 4th, 1923; *Smith* v. *Barnett*, "Estates Gazette," March 29th, 1924); premises let for a political club (*Gardiner & Co.* v. *Deptford Liberal Club*, "Estates Gazette," March 1st, 1924). And County Court decisions that a shop with bedroom overhead and stables with rooms overhead were not within the Act were upheld on appeal on the ground that there was evidence to support the finding of fact (*Hutton* v. *Coombes*, and *Oatway* v. *Munday*, both "Estates Gazette," March 22nd, 1924). A similar decision as to a nursing home is *Lewis* v. *Weston* ("Estates Gazette," July 5th, 1924).

There may be a trade or business, though those carrying it on make no profit (*Re Law Reporting Council*, 22 Q. B. D. 279). In case of a combined let of a house with shop and fixtures, the Act provides no machinery by which the landlord can be given possession of the last, and the rent be apportioned (*Ellen* v. *Goldstein*, (1920) W. N. 253; cp. *Salter* v. *Lask*, (1924) 1 K. B. 754).

Clause (iii) of the proviso was new in this Act, and such cases as *Scott* v. *Austin*, (1919) W. N. 85, decided on the earlier Acts, have consequently now no application.

"Land other than the site of the house" is to be read literally, and will include land conveniently enjoyed with the house, or possibly even the curtilage (*Early* v. *Drummond*, 39 T. L. R. 171). The words refer only to premises not protected by the Act. Hence where the letting included both a dwelling-house and business premises falling within sect. 13, the Act was held to apply even though the rateable value of the business premises was not less than a quarter of that of the house (*Read* v. *Goater*, (1921) 1 K. B. 611). Sect. 13 no longer operates, but having regard to sub-sect. (6), *post*, it is doubtful whether this affects the position. See also this proviso discussed in *Wellesley* v. *White*, (1921) 2 K. B. 204. For definition of rateable value, see *ante*, p. 66.

(3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

Cp. sect. 2 (6). The words "final and conclusive" take away any right of appeal as to amount (*Lyon* v. *Morris*, 19 Q. B. D. 139). But the right of appeal is only limited to the extent mentioned in *Strickland* v. *Palmer*, *ante*, p. 26, the principle of which applies to this sub-section equally with sect. 2 (6).

The Court must apportion in every case falling within this sub-section, whether any separate question arises or not (*R.* v. *Marylebone County Court Judge*, (1923) 1 K. B. 365, distinguishing *Broomhall* v. *Property Owners and Agents, Ltd.*, (1922) 1 K. B. 311). The apportionment operates retrospectively, and over-payments made even before apportionment are recoverable (*Kimm* v. *Cohen*, 40 T. L. R. 123). Whether an apportionment obtained against a lessor who has bought the reversion is binding as against the former lessor so as to enable over-payment to be recovered from him is a point on which a Divisional Court differed (*Wedgwood* v. *Heddersley*, "Estates Gazette," May 5th, 1923, *pro* Salter, J.: *contra*, Lush, J.).

The practical application of this sub-section has presented great difficulties. The sub-section may be illustrated by reference to a case where a house falling within the sections was in August, 1914, let by A to B at a standard rent of *l*X. If B later sublet the first floor to C, the standard rent of that floor was a fraction of *l*X obtained by apportionment. Similarly, if B surrendered his tenancy and A relet the house, not as a whole, but piecemeal, the ground floor to D and the upper floor to E, the standard rents regulating the amount which could be exacted from D and E, respectively, were also fractions of *l*X obtained by apportionment (*Woodward* v. *Samuels*, (1920) W. N. 82, *post*, p. 81). The principle is that A cannot get more by letting the house piecemeal than he could have obtained by letting it as a whole. But if the house as a whole had never been let so that it has no standard rent, then A could let the first floor to B without any question of apportionment arising (*Valentine* v. *Corbetti*, "Estates Gazette," April 5th, 1924).

There are, however, certain qualifications of the general principle, and there will be no apportionment in the following cases.

Sect. 12]

(1) Where the case falls within sect. 12 (9), *infra*, p. 80. If before reletting A reconstructed the house into flats in accordance with that sub-section, the reconstructed flat ceased to be within the Act and has no standard rent.

(2) Apart from a reconstruction falling within sect. 12 (9), there may have been such a reconstruction before the reletting, as was yet sufficient to make the entire house new premises (possibly not a dwelling-house, but a factory) and take it out of this sub-section (*Phillips* v. *Barnett*, (1922) 1 K. B. 222). If the reconstruction is into flats, similarly it may, though not falling within sect. 12 (9), make the resulting flats new dwelling-houses attracting their own standard rent on the first occasion of their reletting after reconstruction (*Marchbank* v. *Campbell*, (1922) W. N. 139; *Sinclair* v. *Powell*, as dealt with in the Court of Appeal, (1922) 1 K. B. 393; see also *Darrell* v. *Whitaker*, (1923) W. N. 165; and *Sutton* v. *Begley*, (1923) 2 K. B. 694). This may be so as regards, *e.g.*, the first floor, though the reconstruction of the entire house was, as regards the first floor, only trivial and the first floor benefited only indirectly (*Stockham* v. *Easton*, (1924) 1 K. B. 52).

(3) According to *Simpson* v. *Zubrasky*, "Estates Gazette," July 22nd and December 16th, 1922, if in August, 1914, A had let to B and B had sub-let the rest of the house to C, reserving to himself the first floor, then, if question arises later as to the standard rent of the first floor, that rent will not be ascertained by apportionment. For (so the argument seems to run) apportionment involves attributing part of B's 1914 rent to the other floors, and their standard rent is already settled by the 1914 rent paid by C to B. In other words, there is no apportionment unless the whole house was let to and *occupied by* the tenant at the critical date for ascertaining the standard rent. (It should be noted incidentally, the taking of a lodger in the strict sense—*post*, p. 119—would not prevent the tenant occupying for this purpose). Whether this is consistent with *Woodhead* v. *Putnam* and *Sinclair* v. *Powell*, *infra*, needs consideration.

(4) Since the Rent and Mortgage Interest Restrictions Act, 1923, the cause that gave rise to these questions of apportionment (*i.e.*, re-letting by a landlord who has obtained possession) will often involve decontrol, when *cadit quæstio*.

Where the owner was himself occupying part of a dwelling-house in August, 1914, having let the residue, no apportionment can be claimed by the tenant to whom is subsequently let the part formerly occupied by the owner (*Lelyveld* v. *Peppercorn*, (1924) W. N. 218).

The case will be one for apportionment where the ground floor of the house in the above illustration was relet by A (or sublet by B) to C before this Act or one of its predecessors affected the property. Thus, if the house was

big enough not to fall within the previous Acts, though it falls within this Act, and A relet the ground floor to C in March, 1919, on a three years' agreement, the standard rent of the ground floor is ascertained by apportionment—it is not ascertained by its own earliest rental as separately let (*Woodhead* v. *Putnam*, (1923) 1 K. B. 252; *Sinclair* v. *Powell*, (1922) 1 K. B. 393). In the case supposed, C will have to pay the contractual rent (even if it exceed the permitted limits) (*Sinclair* v. *Powell*, (1922) 1 K. B. at p. 402), and if C held over after March, 1922, as statutory tenant, he would apparently still be bound to do this. But any further increase would be conditioned by the standard rent obtained by apportionment of the August, 1914, rent of the entire house (and see *ante*, p. 23).

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage; or

(b) to an equitable charge by deposit of title deeds or otherwise; or

(c) to any mortgage which is created after the passing of this Act.

This (which repeats with the addition of (c) sect. 2, sub-sect. (4), of the Increase of Rent (War Restrictions) Act, 1915) must be read in conjunction with sub-sect. (2), *supra*. A mortgage of a farm, for instance, is not necessarily brought within the Acts by the fact that the rateable value of the house and buildings is not less than one-tenth of the rateable value of the whole land comprised in the mortgage; for the letting includes the land, and the rateable value of the land will probably not be less than a quarter of the rateable value of the farm house (*ante*, p. 69).

Subject to clause (a), the Act applies to a mortgage of two houses one of which is within the Act and the other not (*Re Dunn's Application*, 149 L. T. Newspaper, 215). But see sub-sect. (5), *infra*. It is thought the Act would apply to a sub-mortgage.

As regards equitable charges, it has been held by Sargant, J., in *Jones* v. *Woodward*, (1917) W. N. 61, that the words "or otherwise" are not *ejusdem generis*, but are equivalent to "by

some other process than the deposit of deeds"; so that an equitable charge which is created by writing, without any deposit of title deeds, is within the exception and outside the Acts. The meaning of "equitable charge" was very fully discussed by the Court of Appeal in *London County and Westminster Bank, Ltd.* v. *Tompkins*, (1918) 1 K. B. 515. The document in that case was in the usual stringent form employed by bankers. Tompkins in 1912, as security for a present or future overdraft, deposited with the plaintiff bank the title deeds of certain small dwelling-houses, and executed a deed in which he undertook to pay on demand the moneys that should for the time being be due from him to the bank, and he thereby charged his interest in the property comprised in the deeds with payment of the said moneys on demand; he declared that the bank should be deemed mortgagees under the deed of all the premises thereby charged; he undertook on request to execute a legal or other mortgage of the premises; he gave the bank a power of sale on default in payment; he declared that during the continuance of the security he would hold the property charged in trust for the bank, with power to the bank to remove him from being trustee and to appoint themselves or any persons to be trustees and to make a declaration vesting all his said estate and interest in such new trustees; and he irrevocably appointed certain officials of the bank to be his attorneys for executing certain documents, including a conveyance of his estate and interest in the premises. In 1917 the plaintiffs sued to recover the amount due on the overdraft. The Court of Appeal held that the document was an "equitable charge," and therefore outside the Act of 1915, so that the action was maintainable. Pickford, L.J., was of opinion that the document was not a "mortgage" at all, which he understood to mean what Lindley, M.R., said it meant in *Santley* v. *Wilde*, (1899) 2 Ch. 474, viz., "A conveyance of land as a security for the payment of a debt or the discharge of some other obligation for which it is given." Bankes and Scrutton, L.JJ., on the other hand, thought it was a mortgage, which term they said includes an equitable mortgage. But all the judges were of opinion that, whether it was a "mortgage" or not, it certainly was an "equitable charge" within the exception, and therefore the Act did not apply to it.

A formal mortgage of an equity of redemption—in other words, a second, third, or subsequent mortgage—appears to be within the Act. It is not made to secure only a temporary loan. It does convey an interest in property, though only an equitable interest. This view finds support from the wording of sect. 7, which contemplates that the Act may in some cases apply to a mortgagor who is liable to pay interest under a prior incumbrance.

A covenant to surrender copyholds without any actual surrender, the mortgagor appointing the mortgagee his attorney to make the surrender, would appear to be an equitable charge and therefore outside the Act.

As to the case of mortgagors in possession and the effect of decontrol, see *ante*, p. 70; *post*, p. 115.

(5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned:

Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

This provision (new in this Act) has probably in practice rarely been taken advantage of.

(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

This involves the principle that "once within the Act always within the Act." But the decisions have considerably limited the application of this principle, and cases where it will operate appear to be rare. Thus it does not apply where structural reconstruction of the premises results in substantially new premises (*Phillips* v. *Barnett*, (1922) 1 K. B. 222, and other cases cited *ante*, p. 75). Nor does it apply where a house, originally a dwelling-house, is converted into business premises without structural alteration in virtue of fresh terms of tenancy (*Williams* v. *Perry*, (1924) 1 K. B. 936), though the reasoning of this case is not easy to follow. Nor is it altogether easy to see why this subsection was not applicable in *Prout* v. *Hunter*, *ante*, p. 70, and

the sub-section must now be read subject to the possibilities of decontrol under the Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 114.

(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

For purposes of this calculation, the actual rent must be taken free from deduction for rates and taxes, even if the landlord has agreed to pay them (*Mackworth* v. *Hellard*, (1921) 2 K. B. 755, where the history of this provision, which repeats sect. 2 (6) of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by sect. 7 of the Courts (Emergency Powers) Act, 1917, is discussed). The net and not the gross rateable value is to be taken (*Waller & Son* v. *Thomas*, (1921) 1 K. B. 541. The effect of this sub-section is that, if at the expiration of a tenancy where the rent is less than two-thirds of the rateable value, the rent is raised up to or above the two-thirds, the Act will become applicable, and the new rent will be subject to the limitations imposed by it, *i.e.*, will itself constitute the standard rent unless there was a pre-1914 letting by which calculation can be made. This is subject now to the Rent and Mortgage Interest Restrictions Act, 1923, in respect of decontrol, though it is not altogether certain how far the language of that Act might decontrol a house never yet in effective control.

One result will be that usually the ground landlord will be able to increase his "ground rent" if the property has appreciated in value when the lease falls in (cp. *Veale* v. *Cabezas* (1921), W. N. 311). Nor is he protected by this Act as against his mortgagee.

(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

The object of this clause is obscure. Its effect is, no doubt, that where a tenant takes one or two rooms in a house for the purpose of dwelling in them the tenancy of the rooms will be within the Act. But since the rooms were surely, apart from this clause, "a part of a house" within sect. 12, sub-sect. (2) of

the present Act, this clause appears to do no more than repeat the existing rule.

(9) This Act shall not apply to a dwelling-house erected after or in course of erection on the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the third day of August nineteen hundred and fourteen, and let at that date, shall not exceed—

(a) if the house forms part of a housing scheme to which section seven of the Housing, Town Planning, &c. Act, 1919 (9 & 10 Geo. 5, c. 35), applies, the rent (exclusive of rates) charged by the local authority in respect of that house; and

(b) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

Houses erected after or in course of erection at the date of the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (2nd April, 1919), enjoyed under sect. 8 of that Act an immunity now continued. In *Smith* v. *Prime*, (1923) W. N. 131, Roche, J., held that "separate" means "distinct," not necessarily physically separated or partitioned off, and that "self-contained" means that the flat is within an ambit or circle and not scattered. It would not be a self-contained flat where rooms scattered about the house are let, though the mere fact that some accessory parts, such as the cellar and accommodation for servants, are outside the ambit of the flat, will not prevent its being self-contained. In *Darrell* v. *Whitaker*, (1923) W. N. 165, also it was held that there was no need for physical separation, and self-contained was said (by Lush, J.) to mean a complete residence containing all that is reasonably necessary for residents, and by McCardie, J. to mean "self-sufficient." There may be a reconstruction within the section even though it be a breach of building regulations (*Jones* v. *Ramuz*, "Estates Gazette," December 16th, 1922).

In *Woodward* v. *Samuels* ((1920) W. N. 82), under the former Acts it was held that if the house to which the Acts applied was converted into flats, the original standard rent had to be apportioned among the flats. The reconstruction referred to in this sub-section is that of the actual dwelling-house, not of the notional dwelling-house constituted, *e.g.*, by the first floor where separately let. Hence a reconstruction under which the first floor is not even indirectly benefited may prevent the tenant thereof from claiming apportionment under sub-sect. (3) of this section (*Abrahart* v. *Webster*, (1924) W. N. 224). This even though the tenancy of the first floor antedates the reconstruction (*ibid.*). This seems to involve the first floor itself being taken out of the Act, and it is not clear why the Court apparently thought the tenant could retain the benefit of an apportionment made before the reconstruction. A reconstruction not within this section may sometimes prevent apportionment (see *ante*, p. 75).

(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

13. *Application to business premises.*—(1) This Act shall apply to any premises used for business trade or professional purposes or for the public service as it applies to a dwelling-house, and as though references to "dwelling-house" "house" and "dwelling" included references to any such premises, but this Act in its application to such premises shall have effect subject to the following modifications:—

(a) The following paragraph shall be substituted for paragraph (c) of subsection (1) of section 2:

"(c) In addition to any such amounts as aforesaid, an amount not exceeding thirty-five per centum of the net rent":

(b) The following paragraph shall be substituted for paragraph (d) of subsection (1) of section five:

"(d) the premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the court is

satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available":

(c) The following paragraph shall be added after paragraph (g) of the same subsection:

"(h) The premises are bona fide required for the purpose of a scheme of reconstruction or improvement which appears to the Court to be desirable in the public interest":

(d) Paragraph (i) of the same subsection shall not apply:

(e) Sections nine and ten shall not apply.

(2) The application of this Act to such premises as aforesaid shall not extend to a letting or tenancy in any market or fair where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter.

(3) This section shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-one.

This clause has now ceased to operate, though its original inclusion in the Act may in some cases conceivably affect the construction of other sections. Probably it did not affect any premises already within sect. 12 (see 39 "Law Notes," 258, and *Read* v. *Goater*, (1921) 1 K. B. 611; but see also *Duke of Richmond and Gordon* v. *Dewar and Cadogan Hotel Co., Ltd.*, (1921) W. N. 356). Cp. also *Laird* v. *Graves* (1921), I. L. T. Rep. 55; *McQuillan* v. *Clinton* (1921), I. L. T. Rep. 143; *Roberts* v *Collyer*, "Estates Gazette," Feb. 3rd, 1923.

Business premises let at a rent including the use of furniture were outside the section (*Necchi* v. *Cranchi*, 37 T. L. R. 934).

On clause (c) of sub-sect. (1), see *Mitchell* v. *Townend*, (1921) 2 K. B. 91.

GENERAL.

14. *Recovery of sums made irrecoverable, &c.*—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from

a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee.

Under the earlier Acts it was held that overpayments of the sort in question, made under a mistake of law, were irrecoverable. (*Sharp Brothers and Knight* v. *Chant*, (1917) 1 K. B. 771.) Amounts so overpaid are not a fine, premium, or other like sum within sect. 8 (1) (*ibid.*). Then sect. 5 of the Courts (Emergency Powers) Act, 1917, made the payment recoverable within a period of six months. The present Act removed this time limit, but it was reinstated by the Rent and Mortgage Interest Restrictions Act, 1923.

Where there has been no change of landlord, the tenant may deduct the amount overpaid from his rent or interest. If there has been a change of landlord, while he can sue the former landlord or his executor or administrator for the amount, it is not clear that he could deduct from his rent as against the existing landlord overpayments made to the former landlord. It was apparently assumed in *Hacker* v. *Grieg* ("Estates Gazette," June 24th, 1924) that he could not. (Cp. *Wedgwood* v. *Heddersley, ante*, p. 74.) Similar considerations apply where the mortgage has been transferred. The omission of the words "or his legal personal representative" after the word "mortgagee" at the end of the section is curious, but the definitions of "landlord" and "mortgagee" (*ante*, p. 67) include their personal representatives.

As to recovery of overpayments only subsequently ascertained so to be in virtue of apportionment under sect. 12 (3), see *Kimm* v. *Cohen, ante*, p. 74.

(2) If—

(a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable; or

(b) Where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on summary conviction, be liable

to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

This is intended to put a stop to the unscrupulous practice of frightening tenants into paying more than the standard rent by entering up the irrecoverable increase in the rent-book as "arrears," falsely asserted to be payable when the Acts cease to operate. The average tenant does not know sect. 19 (2) of this Act.

In this context reference may be made to the Housing, Town Planning, &c. Act, 1919 (9 & 10 Geo. V. c. 35), which by sect. 29 provides that in the case of houses intended or used for occupation by the working classes, the name and address of the medical officer of health for the district and of the landlord or other person who is directly responsible for keeping the house in all respects reasonably fit for human habitation shall be inscribed in every rent book, or, where a rent book is not used, shall be delivered in writing to the tenant at the commencement of the tenancy and before any rent is demanded or collected, and if any person demands or collects any rent in contravention of the provisions of this section he shall, in respect of each offence, be liable, on summary conviction, to a fine not exceeding 40*s*. Failure to comply with these requirements does not prevent the rent being recovered or prevent its being lawfully due within sect. 5 (1) of this Act (*Narraway* v. *Bolster*, "Estates Gazette," July 19th, 1924).

Reference should also be made to the Statement of Rates Act, 1919 (9 & 10 Geo. V. c. 31), which does not extend to Scotland or Ireland, though similar provisions are contained in sect. 3 of the Houseletting and Rating (Scotland) Act, 1920. It provides by sect. 1 (1), from and after January 1st, 1920, every document containing a demand for rent or receipt for rent, which includes any sum for rates paid or payable under any statutory enactment by the owner instead of the occupier, shall state either the annual, half yearly, quarterly, monthly, or weekly amount of such rates paid or payable in accordance with the last demands received by the owner from the rating authorities at the time of making his demand or giving his receipt in respect of the hereditament in question: Provided that, where such a statement as is required by this section has been furnished in connection with a demand for rent or receipt for rent in respect of a particular period, it shall not be necessary to furnish the statement upon any subsequent demand for rent or receipt for rent in respect of that period.

By sub-sect. (2) this Act shall not apply to weekly lettings at inclusive rentals in any market established under or controlled by statute.

Sect. 2 defines "demand for rent" and "receipt for rent" to include a rent book, rent card, and any document used for the notification or collection of rent due or for the acknowledgment of the receipt of the same; and by sect. 3, if any person makes a

demand for rent or gives a receipt for rent in contravention of this Act, he shall, in respect of each offence, be liable, on summary conviction, to a fine not exceeding 40*s*.

15. *Conditions of statutory tenancy.*—(1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice:

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

This creates what has conveniently come to be known as the "statutory tenancy," and defines the position of a tenant holding over under the Act. Thus, a tenant from year to year who, after notice to quit, takes advantage of the Act, must give the same notice, viz., half a year's notice, as if the original tenancy had continued uninterruptedly. Whether this notice can be given to expire at any time or whether it must be for the end of a current year of the tenancy is not clear.

It seems that no notice is required by the landlord, who can terminate the statutory tenancy at any time (*Shuter* v. *Hersh*, (1922) 1 K. B. 431; *Aston* v. *Smith*, (1924) W. N. 166; and see *Remon* v. *London Real Property Co.*, (1921) 1 K. B. 49, at p. 57), but only by obtaining an order for possession if sect. 5 of the Act so permits. The landlord is, however, prevented by the Act from re-entry without an order, and even where the circumstances are such as to entitle him to an order for possession under sect. 5 (*Cruise* v. *Terrell*, (1922) 1 K. B. 664). Apparently the statutory tenancy will expire *ipso facto* without notice on June 24th, 1925.

For a discussion of the nature of the statutory tenancy, see *Remon* v. *London Real Property Co.*, (1921) 1 K. B. 49, and *Keeves* v. *Dean*, 40 T. L. R. 211, where members of the Court differed in opinion as to whether the statutory tenancy is more than a purely personal right and the extent to which all the

incidents of the original tenancy are included. The matter is important as to, *e.g.*, fixtures, and it is submitted the position of the tenant would be the same as to removal of fixtures as under the original tenancy. His position as to damages for breach of lessors' repairing covenant is certainly so (*Hewitt* v. *Rowlands*, (1924) W. N. 196). An option of purchase in the lease, though it is not a term of the tenancy within the meaning of the section, can nevertheless, on grounds independent of the section, be exercised by a statutory tenant unless he has expressly waived his right (*McIlroy* (*William*), *Ltd.* v. *Clements*, (1923) W. N. 149; cp. *Bradbury* v. *Grimble & Co., Ltd.*, (1920) 2 Ch. 548, and *Rider* v. *Ford*, (1923) 1 Ch. 541).

The statutory tenancy has been held by the Court of Appeal not assignable *inter vivos*—Bankes, L.J., and Lush, J., on the ground that this section does not contemplate assignment; Scrutton, L.J., on the ground that an assignment for value would infringe the prohibition on premiums of sub-sect. 2 of this section, and an assignment not for value would be invalid (*quære* unless by deed?) (*Keeves* v. *Dean*, *Nunn* v. *Pellegrini*, reported together, (1924) 1 K. B. 685). In the last cases the questions whether a statutory tenant can dispose of the statutory tenancy by will or can sub-let were expressly reserved. The point must be considered doubtful. The provisions of sect. 5 (1) (a), (b) and (h) (somewhat curiously not referred to in *Keeves* v. *Dean*) rather support the view that the statutory tenant can sub-let: on the other hand, it is arguable that the rent paid under the sub-lease would be a premium, illegal under sub-sect. 2 of this section. In *Collis* v. *Flower*, (1921) 1 K. B. 409, where after the death of the tenant notice to quit was given the executor who was permitting the residuary legatee to occupy the premises, the executor was held statutory tenant and ejectment refused against him and the residuary legatee. *Mellows* v. *Low*, (1923) 1 K. B. 522, deals similarly with the case of an administrator.

In *Collis* v. *Flower* and *Mellows* v. *Low* the original tenancy was not terminated till after the tenant's death. Whether executor and administrator would become entitled to the deceased's interest where deceased was himself statutory tenant is doubtful. See opinions of McCardie, J., *pro*, in *Mellows* v. *Low*, *ubi sup.*, and of Bankes, L.J., *contra*, in *Keeves* v. *Dean*, *ubi sup.* Where a statutory tenant becomes bankrupt the tenancy is property for the purposes of vesting in the trustee in bankruptcy, but ceases on disclaimer by the trustee (*Parkinson* v. *Noel*, (1923) 1 K. B. 117). After disclaimer the bankrupt himself is not statutory tenant whether the original tenancy terminated before (*Parkinson* v. *Noel*, *ubi sup.*) or after (*Reeves* v. *Davies*, (1921) 2 K. B. 486) bankruptcy.

In *Hicks* v. *Scarsdale Brewery Co.*, (1924) W. N. 189, where a tenant had sub-let, a Divisional Court differed as to the result. Swift, J., thought he had forfeited his protection under the Act,

only the tenant in actual occupation being protected. Acton, J., thought the tenant as well as the sub-tenant was still protected.

The section does not include a tenant ejected under a closing order made under the Housing, Town Planning, &c. Acts who afterwards retakes possession (*Blake* v. *Smith*, (1921) 2 K. B. 685).

(2) Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

See as to sales of furniture, Rent and Mortgage Interest Restrictions Act, 1923, s. 9, and cp. sect. 8 (2).

This leaves a statutory tenant free to bargain with the landlord as to the terms on which he surrenders possession, but not to demand key money from an incoming tenant. On the other hand, neither sect. 8 nor this section covers the case where the tenant takes a premium for assigning his tenancy before expiration (*Mason, Herring and Brooks* v. *Harris*, (1921) 1 K. B. 653; *Remmington* v. *Larchin*, (1921) W. N. 222), though this section applies to a premium on an assignment of the statutory tenancy and was relied on by Scrutton, L.J., as a reason for holding the assignment illegal. See *Keeves* v. *Dean*, *Nunn* v. *Pellegrini* (*ante* in note to last sub-section). Cp. observations in *Mellows* v. *Low*, (1923) 1 K. B. 522.

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

"or for any other reason," *e.g.*, voluntary surrender by the tenant (per Scrutton, L.J., in *Barton* v. *Fincham*, (1921) 2 K. B. at p. 297). A sub-tenant continues to enjoy the protection of the

Act though a forfeiture has been incurred by the lessee (*Ward* v. *Larkins*, (1923) W. N. 189).

16. *Minor amendments of law.*—(1) Section three of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), shall, except so far as it relates to the metropolis, have effect as though for the limits of value specified in that section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and section four of the same Act shall have effect accordingly.

Under the sect. 3 referred to, where the rateable value does not exceed 20*l.* in the Metropolis, 13*l.* Liverpool, 10*l.* Manchester or Birmingham, and 8*l.* elsewhere, the landlord may compound the rates, *i.e.*, agree to be rated and pay them himself instead of the tenant, less a commission. The sect. 4 referred to enables the rating authority in these cases to rate the owner compulsorily. Thus, houses originally within these regulations will remain so, notwithstanding that owing to the increase of rent permitted by this Act their rateable value increases beyond the old limits.

(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

Where the landlord gives notice the tenancy will be determined (*ante*, p. 38), though the tenant is entitled to stay on under a statutory tenancy. Now acceptance by the landlord of rent accruing due after the expiration of the notice was held in *Hartell* v. *Blackler*, (1920) 2 K. B. 161, to be a waiver of the notice. That case, however, has been dissented from by another Divisional Court in the cases of *Davies* v. *Bristow* and *Penrhos College, Ltd.* v. *Butler* (reported together, (1920) 3 K. B. 428), and can no longer be relied on. Acceptance of rent for the statutory tenancy would therefore, apart from this section, not have amounted to a waiver, for the payment to the landlord would be *in adversum*, and the acceptance of it in the circumstances not a voluntary act on

his part (*Davies* v. *Bristow, supra;* cp. *Evans* v. *Enever,* (1920) 2 K. B. 315), and in face of the sub-section acceptance of rent within the three months' limit would clearly not operate as a waiver ("waiver," as the Court pointed out, not being a very accurate expression in the circumstance and only to be understood as meaning that the landlord has agreed to a new tenancy on the old terms). It was suggested in a former edition that acceptance of rent for a period exceeding three months would not operate as a waiver of a notice to quit already given. It was held (though without express argument on this sub-section) in *Town Properties Development Co., Ltd.* v. *Winter* (37 T. L. R. 979) that there was no waiver where two quarters' rent had been accepted, and it is now expressly decided that acceptance of rent for a period exceeding three months would not create a fresh tenancy so as to make necessary a fresh notice to quit before any increase of rent (*Shuter* v. *Hersh,* (1922) 1 K. B. 438; *Felce* v. *Hill,* (1923) W. N. 235; *Creamer* v. *Mitchell,* Estates Gazette, July 28th, 1923).

The effect of a judgment in the landlord's favour for increases which, in virtue of this legislation, were not in fact legally recoverable, may be noticed here. The increase included in the judgment must, of course, be paid, but the tenant is not estopped from disputing similar increases not included in the judgment (*Adams* v. *Garrod,* Estates Gazette, July 14th, 1923).

17. *Rules as to procedure.*—(1) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and, if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs.

By sub-sect. (2) the County Court can entertain claims, *e.g.*, for repayment of rent or mortgage interest irrespective of amount, but apparently cannot entertain an ejectment action not otherwise within the limits of its jurisdiction. For the Act itself gives no power to order possession (*ante,* p. 38), and since the landlord must

show that he has a claim independently of the Act, it appears questionable whether the claim can be said to arise out of the Act. (Note, however, the language of sect. 5 (5), and cp. *Connolly* v. *Whelan,* 54 Ir. L. T. 18.) This view was inferentially adopted in the Scotch case of *Purves* v. *Graham* ((1924) S. C. 477), and has, it is understood, been taken by Mr. Justice Roche in an unreported case of *Stephenson* v. *Edwards,* though Atkin, L.J., has since expressed a different opinion in *Gill* v. *Luck,* (1923) W. N. 284. See Article, 43 L. N. 21. See also note to sect. 2 (6), *ante.* Similar observations apply to the language of the Administration of Justice Act, 1920 (*ante,* p. 17), taking away the right to a jury in proceedings under the Act. Where an action, however, is brought by a tenant holding under the statutory tenancy created by the Act, who sues for a breach of the covenant for quiet enjoyment, the proceedings arise out of this Act, and if the action is brought in the High Court no costs are recoverable (*Wolf* v. *Smith,* (1923) W. N. 229).

There will, apparently, be an appeal from the County Court to a Divisional Court in all cases (except those under sect. 2, sub-sects. (1), (2) and (3) (see sect. 2, sub-sect. (6)), and sect. 12, sub-sect. (3), *ante,* p. 74 (*The Delano,* (1895) P. 40). Where the County Court judge refused an order for possession and made no order as to costs, it was held costs followed the event (*Bensusan* v. *Bustard,* (1920) 3 K. B. 654). But the Court should consider the question of costs and make an order (*ibid.*).

The Act is not a statutory defence requiring notice under the County Court Rules (*Barton* v. *Fincham,* (1921) 2 K. B. at p. 299; see also *Salter* v. *Lask,* (1924) 1 K. B. 754, *ante,* p. 37).

18. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications:—

(a) "Mortgage" and "incumbrance" mean a heritable security including a security constituted by absolute disposition qualified by back bond or letter; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen;

"assessed" means entered in the valuation roll; "land" means lands and heritages; "rates" means assessments as defined in the House Letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 53); "Lord Chancellor" and "High Court" mean the Court of Session; "rules" means act of sederunt; "county court" means the sheriff court; "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38); "mesne profits" means profits; the Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries; the twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the reference to the county agricultural committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under subsection (2) of section eleven of the Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46); references to levying distress shall be construed as references to doing diligence; the reference to the President of the Surveyors' Institution shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyors' Institution; a reference to section five of the Housing, Town Planning, &c. (Scotland) Act, 1919 (9 & 10 Geo. 5, c. 60), shall be substituted for a reference to section seven of the Housing, Town Planning, &c. Act, 1919; and a reference to section one of the House Letting and Rating (Scotland) Act, 1911, shall be substituted for a reference to section three of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41):

(b) Nothing in paragraph (b) of subsection (1) of the section of this Act relating to permitted increases in rent shall permit any increase in rent in respect of any increase after the year ending Whitsunday nineteen hundred and twenty in the amount of the rates payable by the landlord other than rates for which

he is responsible under the House Letting and Rating (Scotland) Act, 1911:

(c) Paragraph (d) of subsection (1) of the section of this Act relating to application and interpretation shall not apply:

This is because the House Letting and Rating (Scotland) Act, 1920 (10 & 11 Geo. V. c. 8), has already dealt with the subject. See also Rent and Mortgage Interest Restrictions Act, 1923, s. 19.

(d) Where any dwelling-house, to which the Acts repealed by this Act applied, is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending at Whitsunday nineteen hundred and twenty-one, the year ending at the said term of Whitsunday shall be deemed to be a period during which, but for this Act, the landlord would be entitled to obtain possession of such dwelling-house.

(2) This Act shall apply to Ireland subject to the following modifications:—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor:

(b) A reference to section fifteen of the Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), shall be substituted for the reference to section one of the Small Tenements Recovery Act, 1838:

(c) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under this Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires:

(d) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that, where part of a house let as a separate dwelling

is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may, on the application of the landlord or tenant, make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise:

(e) The following paragraph shall be substituted for paragraph (ii) of sub-section (1) of section five of this Act:

(ii) Where the Court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding: or

(f) The following subsection shall be substituted for subsection (9) of section twelve of this Act:

(9) This Act shall not apply to a dwelling-house erected after, or in course of erection on, the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but the rateable value of any such dwelling-house to which this Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of section eleven of the Valuation (Ireland) Act, 1852 (15 & 16 Vict. c. 63), were the rent for which a similar dwelling-house might have been reasonably expected to let on the third day of August nineteen hundred and fourteen, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the tenant:

(g) The medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act and in the First Schedule thereto, and the issue of certificates and the payment of fees in connection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland:

(h) This Act shall not apply to any dwelling-house provided by a local authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts.

19. *Short title, duration, and repeal.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(2) Except as otherwise provided, this Act shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-three:

This date having been changed to July 31st, 1923, by the Rent Restrictions (Continuance) Act, 1923, has now been altered to June 24th, 1925, by the Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 112. The "as otherwise provided" refers to sect. 18.

Provided that the expiration of this Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

In view of the need for reference to the old Acts which still exists notwithstanding their repeal, it has been thought convenient to set them out in an Appendix.

Provided that, without prejudice to the operation of section thirty-eight of the Interpretation Act, 1889 (52 & 53 Vict.

c. 63), nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in any court at the date of the passing of this Act, under any enactment repealed by this Act, shall be deemed to have been commenced under this Act.

The importance of this proviso is lessened by the reimposition of a time limit for the recovery of overpayments by the Rent and Mortgage Interest Restrictions Act, 1923, s. 8, and the following observations on this section made in our last edition must now be read subject to this consideration. We wrote:—

"By sect. 38 of the Interpretation Act, 1889, a repeal is not *inter alia* to affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the repealed enactment.

"The effect of the proviso, as read with the other provisions of the Act, it is submitted, is that though the repealed Acts are replaced by the present Act, houses which were already protected by those Acts enjoyed their existing protection till this Act operated to protect them as to the future. Thus, if a house let in August, 1914, at 20*l.* per annum had its rent increased to 30*l.* in 1916, the increase for the future is invalidated by the Act as from March 25th, 1920, but even previously to that the increase was invalidated by the 1915 Act, and continues so to be notwithstanding the repeal of that Act. Hence rent overpaid, even in respect of a period before March 25th, 1920, will be recoverable, except that under the 1915 Act, as amended by later provisions, such overpayment was only recoverable within six months, and if on 2nd July, 1920, recovery was already barred in this way it will continue so to be. But in all other respects the six months' limit is now inapplicable, whether the house fell within the previous Acts or not, *i.e.*, the time limit for recovery is now abrogated, but without reviving rights not *in esse* at the passing of this Act." We were able to add that this view advanced by us in an earlier edition had been affirmed in *Rawlinson* v. *Alger*, (1921) W. N. 90.

It was held in *Benabo* v. *Horseley*, (1920) W. N. 299, that this proviso to sub-sect. (3) applied to proceedings by way of appeal.

SCHEDULES.

[N.B.—The First Schedule is printed as amended by the Rent and Mortgage Interest Restrictions Act, 1923, s. 6 (2), with "date of *service of* this notice" substituted for "service of this notice."]

FIRST SCHEDULE. Sects. 3 & 18.

FORM OF NOTICE BY LANDLORD.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

Date .

To

Address of premises to which this notice refers - -

Take notice that I intend to increase the rent of *l.* *s.* *d.* per at present payable by you as tenant of the above-named premises by the amount of *l.* *s.* *d.* per .

The increase is made up as follows:—

(a) *l.* *s.* *d.* under paragraph (a) of subsection (1) of section two of the Act, being six [eight] per cent. on *l.* *s.* *d.* expended by me since [*insert date*] on improvements and structural alterations, and consisting of*

(b) *l.* *s.* *d.* under paragraph (b) of subsection (1) of section two of the Act, on account of an increase in the rates payable by me from *l.* *s.* *d.* per to *l.* *s.* *d.* per in respect of the premises.

(c) *l.* *s.* *d.* under paragraph (c) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

(d) *l.* *s.* *d.* under paragraph (d) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

The increase under head (b) will date from , being one clear week from the date of service of this notice, and the remaining increases from , being four clear weeks from the date of service of this notice.

* Here state improvements and alterations effected.

† The increase under head (d) is on account of my responsibility for repairs, for no part [part only] of which are you under an express liability.

‡ At any time or times, not being less than three months after the day of 19 , you are entitled to apply to the county court for an order suspending the increases under heads (c) and (d) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on any application for a certificate, but, if the certificate is granted, you can deduct this sum from your rent. The address of the sanitary authority is .

§ Signed,

Address

SECOND SCHEDULE.

ENACTMENTS REPEALED.

The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97) (the whole Act).

The Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25) (sects. 4, 5 and 7).

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (8 & 9 Geo. 5, c. 7) (the whole Act).

The Increase of Rent, &c. (Amendment) Act, 1919 (9 & 10 Geo. 5, c. 90) (the whole Act).

As to this schedule, see *ante*, p. 93. The Increase of Rent, &c. (Amendment) Act, 1918, was already repealed by the last Act in the schedule.

† Where the tenant is under an express liability for part of the repairs, the increase under head (*d*) is to be settled in default of agreement by the county court.

‡ This paragraph need not be included if there is no increase under head (*d*). [This note and the two preceding ones are statutory.]

§ See note, *ante*, p. 32.

INCREASE OF RENT AND MORTGAGE INTEREST RESTRICTIONS (CONTINUANCE) ACT, 1923.

13 & 14 GEO. 5, c. 7.

An Act to continue the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, *and any enactment amending that Act, until the thirty-first day of July, nineteen hundred and twenty-three.* [17th May, 1923.]

1. *Continuance of* 10 *&* 11 *Geo.* 5, *c.* 17.—The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and any enactment amending that Act, shall continue in force until the thirty-first day of July, nineteen hundred and twenty-three.

2. *Short title and extent.*—This Act may be cited as the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, and does not extend to Northern Ireland.

RENT RESTRICTIONS (NOTICES OF INCREASE) ACT, 1923.

13 & 14 Geo. 5, c. 13.

An Act to amend the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, *with respect to the effect of notices to increase rent given thereunder; and for purposes consequential thereon.* [7th June, 1923.]

This Act was passed on 7th June, 1923, in consequence of the decision in *Kerr and Others* v. *Bryde,* (1923) A. C. 16, deciding, in the words of the head note, that "By virtue of sect. 3 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, it is a condition precedent to the right of a landlord to a permitted increase of rent under the Act that he should have terminated the tenancy by serving on the tenant in Scotland a notice of removal and in England a notice to quit in cases where notice to quit is required for that purpose."

Sect. 3 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, provides that nothing in the Act shall authorise any increase of rent "except in respect of a period during which but for this Act the landlord would be entitled to obtain possession." It had already been decided by the Court of Appeal in England that this clause prevented any increase on the rent of weekly tenants unless notice to quit terminating the tenancy was first given (*Newell* v. *Crayford Cottage Society,* (1922) 1 K. B. 656), affirming the principle referred to by McCardie, J., in *Glossop* v. *Ashley,* (1921) 2 K. B. 451, as a "basic" one that a landlord could not increase rent merely by giving notice of increase; he must first determine any existing tenancy.

In *Kerr and Others* v. *Bryde,* (1923) A. C. 16, on appeal from the First Division of the Court of Session in Scotland the Court of Appeal decision in *Newell* v. *Crayford Cottage Society* was approved by the House of Lords. Their Lordships also held that the statutory notice of increase of rent was not in itself notice to quit.

The result is that where, as has sometimes happened, more especially in Scotland, the landlord had given the statutory notice of increase but no notice to quit, the increase was invalid and the tenant who had paid it was entitled to recover it from his landlord.

With this situation the present Act deals, and its effect is shortly as follows:—

Retaining the "basic principle" of *Kerr* v. *Bryde* that no increase is authorised during an existing tenancy, it evades that doctrine as to continuing tenancies by making the statutory notice of increase in itself equivalent to notice to quit. Statutory notice of increase to a weekly tenant will therefore in future be effective though no express notice to quit is given.

Further, the Act is retrospective in a somewhat complicated way. As from December 1st, 1922, to its passing the Act has full retrospective effect except that (1) to secure this retrospective operation the landlord has to give a notice claiming the benefit of this Act (sect. 2 (2))—a new statutory form being provided for the purpose—and (2) the arrears of increase for the period in question will only be payable by instalments (sect. 2 (1)).

As to the period before Dec. 1st, 1922, the policy of the Act is to accept the accomplished fact. Where the tenant has insisted on his *Kerr* v. *Bryde* rights, they are left to him intact. If the landlord does not already possess his increase for this period, he is still unable to obtain it. Where, on the other hand, the tenant has paid and the landlord holds increases decided by *Kerr* v. *Bryde* to be invalid, the present Act prevents the tenant from obtaining a refund from the landlord.

This is the general scheme. Its exact application in detail is somewhat intricate, and will be found explained at length in the notes to the Act.

It may be noted incidentally that (as was emphasised in the first and later editions of this book) the principle of *Kerr* v. *Bryde* was implicit in the earlier Acts beginning with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which preceded the Acts dealt with in the present edition (*Smith* v. *Lloyd*, (1923) W. N. 197, *ante*, p. 22). The present Act does nothing to remedy the invalidity of an increase under the earlier Acts made during an existing tenancy.

While the main object of the Act is to validate increases otherwise bad, the statutory notice will be an effective notice to quit for all purposes, including that of ejectment (*Aston* v. *Smith*, (1924) W. N. 166).

1. *Effect of notices to increase rent under principal Act.*—(1) Where notice of intention to increase rent has, whether before or after the passing of this Act, been served on a tenant in conformity with subsection (2) of section three of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), and a notice to ter-

minate the tenancy was necessary in order to make such increase effective, the notice of intention to increase the rent shall have effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was first to take effect, or on the earliest day thereafter on which if it had been a notice to terminate the tenancy, it would have been effective for that purpose, and in the latter case a notice of increase served before the passing of this Act shall be deemed to have had effect as if such earliest date had been specified in the notice as the date as from which the increase was to take effect:

Provided that—

(a) nothing in this Act shall entitle a landlord after the passing of this Act to recover from a tenant, in respect of any period before the first day of December, nineteen hundred and twenty-two, the increase of rent made valid by this Act, or any sums which have been recovered from the landlord before that date by means of deductions from rent or otherwise, or any rent due before that date which has not been paid by reason of such deductions having been made therefrom; but section fourteen, subsection (1), of the principal Act shall not apply to an increase of rent made valid by this Act which was paid by, or recovered from, a tenant prior to the first day of December, nineteen hundred and twenty-two;

(b) nothing in this Act shall affect the right to enforce any judgment of a court of competent jurisdiction given before the fifteenth day of February, nineteen hundred and twenty-three, or render recoverable any sum paid under such a judgment.

(2) Any increase of rent made valid by this Act is hereinafter referred to as a validated increase of rent.

The general result of this section is (1) to preserve the doctrine of *Kerr* v. *Bryde*, so that increase of rent during the existence of a continuing tenancy (*i.e.*, a yearly, monthly or weekly tenancy) is still impossible; (2) to modify the practical application of the

doctrine to such tenancies by making the statutory notice of increase in itself equivalent to a notice to quit.

The practical effect, therefore, is that separate notice to quit will not be a condition precedent to the increase of rent in the case of continuing tenancies. In the case of such tenancies the statutory notice of increase, as soon as it takes effect under this section as notice to quit, overrides sect. 3 (1) of the principal Act, which provides that "nothing in the Act shall be taken to authorise an increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession."

Further, these provisions are (without prejudice to any judgment before February 15th, 1923, being the date when the Act was originally introduced in Parliament) retrospective within certain limits. This retrospective effect of the Act was stated in our last edition, and the view there taken is now affirmed by *Landrigan* v. *Simmons*, (1924) 1 K. B. 509, and is as follows:—

(1) As to increases validated by the present Act in respect of the period commencing Dec. 1st, 1922 (date of a Government announcement of intention to pass the Act), the retrospective operation is absolute. If the increase has not been paid the landlord is entitled to enforce payment (though only by instalments (sect. 2 (1), *post*) and only on complying with sect. 2 (2), *post*): if he has received payment he cannot be compelled to refund by the tenant. Nor can the tenant secure a refund by deduction from future payments of rent.

(2) As to validated increases in respect of a period before Dec 1st, 1922, retrospective operation varies with circumstances. Where the landlord has in fact had and retains the increase, the *fait accompli* is accepted and the payment is irrecoverable by the tenant. Where the landlord is not in the position of having had the increase (*i.e.*, has never been paid it, or, having been paid it, has subsequently been forced to refund it to the tenant, *e.g.*, by deduction from rent under sect. 14 of the Act of 1920), the tenant remains entitled to the benefit of *Kerr* v. *Bryde* and the increase remains irrecoverable from him. The position is crystallised as on December 1st, 1922 (*Landrigan* v. *Simmons*, *ubi sup.*). This result was given effect to on appeal, the Act having been passed pending the hearing in the Court below (*ibid.*).

It is a somewhat curious result: the man who held out for *Kerr* v. *Bryde* rights is confirmed in them to Dec. 1st, 1922; the man who did not claim *Kerr* v. *Bryde* rights is deprived of them entirely, the argument being that he will not miss what he never practically enjoyed.

Increases which were bad in virtue of *Kerr* v. *Bryde* and are made good by the present Act are referred to as "validated increases" (sub-sect. (2), *infra*). It remains to consider the date from which validation operates.

The increase is still, by sect. 3 (1) of the principal Act, prevented from becoming effective till the tenancy is terminated, which the present section provides will be either (a) on the day before the increase is first to take effect under the notice, or (b) the earliest date thereafter when express notice to quit would have operated, whichever (in our construction of the section) is the later date. We arrive at this result as follows. In no case could the increase be effective till the expiration of the statutory notice of increase (see the express provisions of sect. 3 (2) of the principal Act), *i.e.*, in no case can the increase operate till the date obtained by reference to (a). The date (b) therefore serves no useful object unless, by falling later than (a), it prolongs the time of immunity from increase. On this showing, in the case of a yearly tenant service of the statutory notice will not operate to start any increase of rent till the expiration of a year of the tenancy occurring not less than half a year after the date of the statutory notice, this being the earliest date at which an express notice to quit could have taken effect.

Assuming the above interpretation of the Act to be correct, the practical result will be as follows. A yearly tenancy must, unless some other notice is required by contract, local custom or statute, be determined by half a year's notice expiring with a current year of the tenancy. Half a year's notice means a full 182 days, except where the tenancy commenced on one of the usual quarter days, when a customary half year's notice suffices, *i.e.*, one on or before the quarter day next but one before the quarter day on which it is to determine. When the term commences on or from a given date, notice to quit on the anniversary date is, as regards the date of expiration, a valid notice. (*Sidebotham* v. *Holland*, (1895) 1 Q. B. 378. See also *Meggeson* v. *Groves*, (1917) 1 Ch. 158.) In the case of yearly tenancies, therefore, the statutory notice of increase will take effect as notice to quit on a date ascertained in accordance with the rules just mentioned, and the increase will take effect as from that date.

The cases of monthly and weekly tenancies will proceed on the same lines, but are complicated by a certain vagueness as to both periods (a) and (b). First, as to (a), the Act talks of *the* increase first taking effect, but there may be two increases, viz., that in respect of rates and that in respect of other matters, the two taking effect at different dates, *i.e.*, the expiration of a week and of a month respectively. It is submitted, however, that where the statutory notice of increase demands an increase in respect of rates at the end of a week and a further increase at the end of a month, "the increase is *first* to take effect" at the end of the week, the word "first" being probably inserted with a view to this case.

As to period (b), there is a curious uncertainty as to the exact notice requisite (apart, of course, from special agreement (cp. *Savory* v. *Bayley*, 38 T. L. R. 619)) to determine such tenancies.

In *Simmons* v. *Crossley*, (1922) 2 K. B. 95, it was held by Swift and Acton, JJ., that, unlike the notice requisite to determine a yearly tenancy, the notice determining a monthly or (per Swift, J., Acton, J., expressing no opinion) a weekly tenancy can be given to expire at any time, and need not be given to coincide with the determination of some month or week of the tenancy. In *Queen's Club Garden Estates, Limited* v. *Bignell*, (1924) 1 K. B. 117, Lush and Salter, JJ., held that notice determining a weekly tenancy must be given to expire with a current period of the tenancy. Whether the notice need be a full month's or week's notice, or whether less suffices, is discussed in the same cases. In *Precious* v. *Reedie*, (1924) W. N. 159, Bailhache and Sankey, JJ., held that to determine a monthly tenancy a month's notice expiring with a current month of the tenancy is required. The better view on these authorities is that a full month's or week's notice expiring with a current month or week of the tenancy is required. The notice must apparently be for a clear week or month, since the law takes no account of fractions of a day (*Weston* v. *Fidler*, 47 S. J. 567).

If so, as to weekly tenancies, at the end of a week from the statutory notice, if that date coincides with the expiry of a current week of the tenancy, and otherwise at the end of the current week expiring immediately after that date, the tenant is outside *Kerr* v. *Bryde* and liable forthwith to the increase for rates (though he will not be liable for the additional increase till after a month from the statutory notice).

As to monthly tenancies, the increase will operate as from a month from the statutory notice of increase if that date coincides with the end of a current month, and otherwise at the first expiry of a current month after that date.

It must be remembered that the increase is not "validated" absolutely, *i.e.*, any increase made "valid by this Act" is only made valid in the sense that it is no longer invalidated by sect. 3 (1) of the principal Act under the doctrine of *Kerr* v. *Bryde* as not being "in respect of a period during which," &c. There is nothing in this Act to validate any increase bad on other grounds, *e.g.*, because the statutory form of notice of increase was defective or because the time limit imposed by sect. 3 (2) of the principal Act has not yet expired. (Cp. the position as to weekly tenancies, *ante*.) But the concluding words of the first para. of sect. 1 will, as to notices before the Act, prevent their being invalid by reason of failure to indicate accurately the date of commencement of the increase.

As to the effect of an amendment of the statutory notice of increase, see note to the Rent and Mortgage Interest Restrictions Act, 1923, s. 6.

The effect of this section may be illustrated by reference to the case where statutory notice of increase was given to a weekly tenant in 1921 but no notice to quit was given. In these circum-

stances as from the passing of the present Act rent must be paid at the increased rate. As to arrears in respect of the increase, as already mentioned, if the tenant paid the increase the payment stands and he cannot recover the amount from the landlord. If, however, the landlord has not received the increase, he will still not be entitled to it in respect of the period down to Dec. 1st, 1922. As to increase in respect of the period commencing Dec. 1st, 1922, and ending with the passing of the present Act, the landlord will be entitled to the increase subject (1) to notice being given as required by sub-sects. (2) and (3) of sect. 2, (2) to payment being made by instalments as provided by sect. 2, sub-sect. (1), (3) to the arrears of increase ceasing to be payable on the ground of bad repair under sect. 3 of the present Act.

2. *Payment of arrears by instalments.*—(1) The amount due under this Act on account of any arrears of rent, that is to say,—

(a) any validated increase of rent in respect of the period from the first day of December, nineteen hundred and twenty-two, to the date of the passing of this Act, both inclusive; and

(b) any sum which during the said period has been recovered by the tenant from the landlord by deductions from rent or otherwise, and which would not have been so recoverable had this Act been then in force;

shall be payable by instalments with and as part of the periodical payments of rent, each instalment being fifteen per cent. of the standard rent for the week, month, or other period for which the rent is payable, fractions of a penny being disregarded; and such instalments shall continue payable until the whole of the amount of such arrears is paid off:

Provided that—

(i) the tenant may at any time pay to the landlord the full amount of such arrears subject to the deduction of the aggregate amount of the instalments (if any) already paid; and

(ii) if a tenant by whom any such instalments are payable gives up possession of the premises either voluntarily or on any order or judgment of a court, the

balance of the sum payable by instalments shall immediately become due and recoverable.

This provides for payment by instalments of arrears of increase by a *Kerr* v. *Bryde* tenant for the period Dec. 1st, 1922 to 7th June, 1923, where he has hitherto not paid, or, having paid, has recovered from the lessor by deduction from rent or otherwise. "Or otherwise" will not, however, include the case where he has recovered it from the lessor under a judgment given before Feb. 15th, 1923 (sect. 1, proviso (b)).

Where the date for payment of rent falls on any day other than Dec. 1st, it is conceived that strictly as regards the first payment after that date apportionment can be made. Probably in the case of the shorter tenancy the lessor will waive his claim in practice. Thus, where in the case of a weekly tenancy pay day falls on Dec. 3rd, the lessor will waive his claim to have any increase in respect of the period Dec. 1st—Dec. 3rd included in the arrears payable to him by instalments. The lessor may, indeed, be well advised to do this, since the calculation is a nice one and an error in it may conceivably vitiate his notice under sub-sect. (2) (*infra*), while even if the correct figures are arrived at, the notice might be vitiated if the view that the Act permits apportionment is incorrect, which is, perhaps, open to argument.

"Fractions of a penny being disregarded." Whether in favour of lessor or tenant might have been made clearer. Presumably in favour of the latter, the tenant paying the 15 per cent. less any fraction of a penny involved.

(2) A landlord claiming that a sum on account of arrears of rent is due to him under this Act shall serve on the tenant a notice to that effect, and the notice shall specify the amount so claimed and the amount of the instalments claimed to be payable, and the first instalment shall not be payable until after the expiration of one clear week from the date of the notice. If such notice contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive.

It will be observed that the present sub-section only deals with increases in arrear—it is only in connection with arrears that this second statutory notice of validation has any application.

The first instalment will be payable on the first rent day after

the expiration of one clear week from the date of the notice under this sub-section—see statutory note to statutory form, *infra*, p. 110.

The result of this section, illustrated by reference to a weekly tenant who, in 1921, received the statutory notice of increase but has had no notice to quit, is as follows. From the passing of the present Act the rent must be treated as increased and payment in future made accordingly. This, independently altogether of the present sub-section. Under this sub-section, however, when the statutory notice required by it has been served, the arrears of increase for the period Dec. 1st, 1922, to the passing of the Act must be paid by instalments. Hence, on the next rent day occurring a week after the date of the statutory notice of validation the tenant will have to pay (1) the standard rent, (2) the permitted increase as required by the statutory notice of increase, (3) 15 per cent. of the standard rent for the week payable on account of arrears of increase for the period Dec. 1st to 7th June, 1923.

(3) The notice shall be in the form contained in the Schedule to this Act, or in a form substantially to the same effect, and the landlord shall furnish the tenant with details in writing showing how the amount claimed is arrived at, and how the amount of the instalments has been calculated.

Cp. the language of the principal Act, sect. 3 (2), and decisions thereon. Any substantial departure from the form would, no doubt, invalidate the notice. Having regard to sub-sect. (2), any error as to the amount claimed or the amount of the instalments would probably be fatal. Written details as to how the amount is arrived at are to be supplied in a separate statement—see conclusion of statutory form, *post*, p. 111. It is not very clear why this should be so nor whether the omission of or defects in this separate statement would invalidate the notice. If a notice is given under this section which for any reason is invalid, there is nothing to prevent a valid notice being given and recovery made in virtue of that—there is no time limit for recovery by the lessor of recoverable validated increases. In cases of doubt as to the amount, resort may be had to sub-sect. (4) of this section.

(4) Any question as to the amount of arrears due from a tenant, or the amount of any instalments, shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

Cp. sect. 2 (6) of the principal Act.

As application is not restricted to cases where notice has been given under sub-sects. (2) and (3), there seems no reason why this application should not be made as a preliminary to the notice where difficulty arises as to the amount due.

The words "final and conclusive" take away any right of appeal (*Lyon* v. *Morris*, 19 Q. B. D. 139), but the right of appeal is only limited within the limits specified in *Strickland* v. *Palmer*, *ante*, p. 30.

This Act is to be read as one with the principal Act (sect. 4, *post*), so that the rule-making power under the principal Act will apply here. Subject to any fresh rule that may be made, the application under this section should apparently be by summons.

3. *Power to suspend liability if premises unfit for human habitation or in state of disrepair.*—(1) A tenant, who becomes by virtue of this Act liable to pay any sum by way of rent or on account of arrears, or the sanitary authority, may apply to the county court for an order suspending such liability on the ground that the house is not in all respects reasonably fit for human habitation or that it is otherwise not in a reasonable state of repair, and section two of the principal Act shall apply as if the application had been made under subsection (2) of that section.

Sect. 2 (2) of the principal Act authorises tenant or sanitary authority to apply to the County Court for an order suspending increase of rent where the house is not in all respects reasonably fit for human habitation or is otherwise not in a reasonable state of repair. The jurisdiction of the County Court is exclusive, the High Court having no jurisdiction (*X Rays, Limited* v. *Armitage*, 66 S. J. 351), and the County Court decision is final whether the application is made by the sanitary authority or the tenant. (*Glasgow Corporation* v. *Mickel*, (1922) S. C. 228.)

The exact effect of the practical inclusion of sect. 2, sub-sect. (2) of the principal Act may in some cases give rise to problems. It is thought that the time limit of three months in that sub-section will have no application to proceedings under the present sub-section. The wording of the statutory form, *infra*, confirms this view, and it would seem that a *Kerr* v. *Bryde* tenant only liable for increased rent under this Act can obtain an order suspending all increase or arrears of increase. The tenant liable to increase under the principal Act can obtain suspension only of part of his increase (viz., increase falling under paras. (c) and (d) of sect. 2 (1) of the principal Act, not, *e.g.*, increase in respect of rates).

(2) Where the liability in respect of the payment of instalments is so suspended, the instalments which would have become payable during the period of suspension, shall for the purpose of calculating the aggregate amount of instalments paid be deemed to have been paid.

It will be observed that where an order of suspension is made increased rent or arrears thereof falling due during the currency of the order will be completely cancelled and will not become payable even after the order has expired. The obvious step for the lessor whose property is in a bad state of repair is to put matters right before giving the statutory notice under this Act if he wishes to recover his instalments of arrears. There is no time limit for the statutory notice under this Act.

(3) Where a tenant has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any sum which the tenant is by virtue of this Act liable to pay by way of rent or on account of arrears in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes any such sum), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Provided that the foregoing provision shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

This sub-section overlaps the previous sub-sect. (1). Like that sub-section it applies only to sums claimable by the lessor in virtue of this Act, and to the whole of such sums, but unlike sub-sect. (1), the present sub-section operates without the tenant having himself to make application to the Court. (Cp. also Rent and Mortgage Interest Restrictions Act, 1923, s. 5, *post*, p. 117.)

(4) For the purposes of this Act a certificate of a sanitary authority shall specify what works (if any) require to be

executed in order to put the house into a reasonable state of repair.

(5) An instrument purporting to be a certificate of a sanitary authority and to be signed by an officer of the authority shall, without further proof, be taken to be a certificate of the authority unless the contrary is proved.

(6) A sanitary authority may appoint a committee for the purposes of this Act and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under this Act.

4. *Short title and construction.*—This Act may be cited as the Rent Restrictions (Notices of Increase) Act, 1923, and shall be construed as one with the principal Act, except that this Act shall not extend to Ireland.

SCHEDULE.

FORM OF NOTICE BY LANDLORD.

Rent Restrictions (Notices of Increase) Act, 1923.

To Date .

Address of premises to which this notice refers - -

TAKE NOTICE that I claim that the sum of is due to me from you as tenant of the above premises on account of arrears of rent under the above-mentioned Act.

The amount due on account of such arrears is payable by instalments with, and as part of, your weekly [*monthly, or other periodical*] rent until the amount of such arrears is paid off. The first instalment will be payable on the day of .*

The amount of the instalments claimed by me is a week [*month, or other period, as the case may be*].

---

* The date to be inserted will be the first rent day after the expiration of one clear week from the date of the notice. [N.B.—This asterisked note is statutory and forms part of the Act.]

If you wish to dispute the amount of the sum claimed or of the instalments, you are entitled to apply to the County Court of .

You are entitled to apply to the County Court for an order suspending any sum due from you by way of rent, or on account of arrears, under the above-mentioned Act, if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the County Court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable, but, if the certificate is granted, you can deduct this sum from the sum due from you as aforesaid. The address of the sanitary authority is .

If at any time you give up possession of the above premises, either voluntarily or on an order or judgment of the Court, the balance of the sum payable by instalments will immediately become due.

A statement is sent herewith showing how the amount of the above claim is arrived at, and how the amount of the instalments has been calculated.

Signed .

Address .

[It must be remembered that this form needs supplementing in accordance with sect. 2 (3).

The County Court in question will apparently be that of the district in which the premises are situate. (Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920.)]

RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923.

[13 & 14 Geo. 5, c. 32.]

An Act to amend and prolong the duration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, *and any enactment amending that Act, and to make provision as to the rent and recovery of possession of premises in certain cases after the expiry of that Act, and for purposes in connection therewith.* [31st July, 1923.]

Part I.

Amendment and Prolongation of Duration of Principal Act.

1. *Prolongation of duration of principal Act.*—Subject to the provisions of this Act, the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), shall continue in force until the twenty-fourth day of June, nineteen hundred and twenty-five.

In Scotland the date is May 28th, 1925 (sect. 19, *post*).

2. *Exclusion of dwelling-houses from application of principal Act in certain cases.*—(1) Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from

and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house:

Provided that where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and if the landlord is in, or comes into possession of any part not so sub-let the principal Act shall cease to apply to that part, notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act:

Provided also that where a landlord comes into possession under an order or judgment made or given after the passing of this Act, on the ground of non-payment of rent, the principal Act shall, notwithstanding anything in the foregoing provisions of this subsection, continue to apply to the dwelling-house.

(2) Where, at any time after the passing of this Act, the landlord of a dwelling-house to which the principal Act applies grants to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-six, being a term of not less than two years, or enters into a valid agreement with the tenant for a tenancy for such a term, the principal Act shall, as from the commencement of the term, cease to apply to the dwelling-house, and nothing in the principal Act shall be taken as preventing or invalidating the payment of any agreed sum as part of the consideration for such lease or agreement:

Provided that where part of the dwelling-house is lawfully sub-let at the commencement of the term, and is a dwelling-house to which the principal Act applies, that part shall, notwithstanding anything in the foregoing provisions of this sub-section, continue to be a dwelling-house to which the principal Act applies.

(3) For the purposes of this section the expression "possession" shall be construed as meaning "actual possession," and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent.

"Passing of this Act," *i.e.*, July 31st, 1923.

This is an important new provision, having for its object the immediate decontrol of the houses specified, thus modifying the principle of sect. 12 (6) of the principal Act that "once within the Act is always within the Act." The houses thus decontrolled fall into two classes, viz.:—

(1) Those under sub-sect. (1), of which the landlord has come into possession. But there exist the following important exceptions:—

(a) Sub-lettings. Where the tenant of a house has let, *e.g.*, the third floor, that floor is itself a dwelling-house and within the Act. Consequently, if the tenant obtains possession from the sub-tenant, that floor would be decontrolled were it not for the first proviso to sub-sect. (1). The effect of this proviso, however, is that in such a case the third floor will not be decontrolled, and if the tenant again sub-let it (assuming that as statutory tenant he is entitled to sub-let, which is doubtful—see *ante*, p. 86), it must be under Increase of Rent Act conditions. On the other hand, if the tenant gives up to the landlord possession of the first and second floors, the sub-tenant of the third floor remaining on, then the first and second floors will be decontrolled, though the third floor will not, and the sub-tenant thereof will, in future, hold under the superior lessor but with the protection of the Acts (sect. 15 (3) of the principal Act). It must not be too lightly assumed that in all cases vacant possession involves decontrol. It may usefully be noted here that a lessor suing his tenant in ejectment may confine his claim to part of the premises (*Salter* v. *Lask*, 156 L. T. News. 337).

(b) Where the landlord obtains possession under a judgment after 31st July, 1923, on the ground of non-payment of rent (proviso 2 to sub-sect. (1)).

(c) Where the landlord's possession is not "actual" as required by the definition in sub-sect. (3). The exact meaning of "actual" in this context may give rise to problems, nor is it clear precisely what cases the concluding words of sub-sect. (3) ("and a landlord shall not be deemed," &c.) are intended to cover. Probably the words were meant to apply where, by arrangement to

which the landlord is a party, a tenant vacates in favour of a fresh tenant. Even though there be an interval before the fresh tenancy commences, during which the landlord is technically in possession, this is not to cause decontrol of the house.

(d) Where judgment for possession was obtained by misrepresentation or concealment of material facts, the Court will in some cases have power under sub-sect. (7) of sect. 5 of the principal Act as amended, to order the house to be re-controlled.

(2) The other class of houses excepted are those (sub-sect. (2)) which, after July 31st, 1923, have been validly let till at least after June 24th, 1926 (in Scotland, May 28th—see sect. 19, *infra*), for a term of not less than two years. Since vacant possession will not involve decontrol in every case, and in any event will probably not be common, this provision may prove a useful alternative method to the landlord of effecting decontrol. It to some extent gets over the possible difficulties of increasing rent on a fresh letting suggested in *Schmit* v. *Christy*, (1922) 2 K. B. 60. See *ante*, p. 30.

In view of the importance to the landlord of vacant possession as a means to decontrol (either *per se* or as enabling the landlord to relet under sub-sect. (2) above), it may be useful to recall that the statutory tenancy is not determined by death, *ante*, p. 86, but is not assignable (*ante*, p. 86). It will rarely happen that "actual possession" is obtained otherwise than under an order for possession, or by the tenant's surrender.

Little thought seems to have been given to the effect of decontrol on the mortgage of a house. Where a house is decontrolled except for a sub-let floor, it is perhaps arguable that the mortgagor's position will depend on whether the case still falls within sect. 12 (4) of the principal Act, and that possibly difficulties may arise where a mortgaged house is decontrolled and re-controlled under sect 5 (7) of the principal Act as amended, and it is thought a more probable view is that the mortgagor's position in virtue of sect. 12 (6) of the principal Act remains unaffected.

Throughout this section the expression "landlord" is used where perhaps "owner" might have been a more natural term. One who has come into possession of a dwelling house has *ipso facto* ceased to be landlord. Or suppose the tenant purchase the freehold, is he a landlord who has obtained possession, or is the house still controlled in his hands or in the hands of his purchaser? And would a house be de-controlled if it is in the owner's possession and has never been let? It is thought that landlord here must receive a sufficiently extended meaning to ensure decontrol in these and similar cases—indeed the definition of landlord in sect. 12 (1) (g) is probably in itself sufficient for this purpose.

3. *Determination of certain leases and tenancies.*—Where before the passing of this Act, the landlord of a dwelling-house to which the principal Act applies has granted to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-three, or has entered into a valid agreement with the tenant for a tenancy for such a term, and the rent thereby reserved is reserved at a rate which after but not before such last-mentioned date exceeds the standard rent and the increases permitted under the principal Act or this Act, the landlord may by three months' notice in writing expiring not earlier than the twenty-first day of December, nineteen hundred and twenty-three, and not later than the thirty-first day of March, nineteen hundred and twenty-four, determine the said lease or tenancy, provided that if within one month of the receipt of such notice the lessee or tenant shall give to the landlord notice in writing that he elects to abide by the said lease or agreement and the terms thereof, then the said lease or agreement shall remain in full force and effect in every respect including the amount of the rent thereby expressed to be reserved unaffected by the principal Act or this Act.

June 24th, 1923, was the date at which the principal Act was originally due to expire. This section is to meet the case where, *e.g.*, the house has, before July 31st, 1923, been let till March, 1927, at a rent, till June 24th, 1923, permitted by this Act, and thereafter at a greater rent. Apart from the present provision, the prolongation of the principal Act till June, 1925, would prevent the agreement to pay this greater rent from being enforceable till June, 1925, *i.e.*, the lease would not bind the tenant to pay the agreed rent though the tenant would enjoy the security of tenure till March, 1927, which it afforded. The present provision prevents the tenant having it both ways. It enables the landlord to put the tenant in the dilemma of (1) accepting the lease as binding for all purposes, or (2) treating the tenancy under the lease as ended, when the tenant will hold as statutory tenant (on the terms of the lease) liable only to a controlled rent, but without security of tenure after June 24th, 1925, when the principal Act is due to expire. The tenant has the chance of a gamble on the soundness of *Schmit* v. *Christy*, *ante*, p. 30, and the probability of a further prolongation of the Act in 1925.

"Month" means calendar month.

Sect. 4]

4. *Restriction on right to possession.*—The following section shall be substituted for section five of the principal Act, namely:—(*The substituted section is printed* ante, p. 37 *et seq., with a further substitution of Clause IV.*, ante, p. 49, *for the Clauses IV. and V., which the present section introduced. These repealed clauses will be found* post, *p.* 150.)

5. *Suspension of increase of rent on ground of disrepair.*—(1) Where the tenant of a dwelling-house to which the principal Act applies has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any increase of rent permitted under paragraph (*c*) or paragraph (*d*) of subsection (1) of section two of the principal Act in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes such increase), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Provided that this section shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(2) When, after the issue of any such certificate, the landlord has executed to the satisfaction of the sanitary authority the repairs which require to be executed in order to put the dwelling-house into a reasonable state of repair, the authority shall, on the application of the landlord and upon payment of a fee of one shilling, issue a report to that effect.

Contrast the similar but slightly different sect. 3 (3) of the Rent Restrictions (Notices of Increase) Act, 1923, *ante*, p. 109.

Cp. also sect. 13 of the present Act, which, however, does not operate till after June 24th, 1925.

This section to some extent overlaps sect. 2 (2) of the principal Act (*ante*, p. 27), from which it differs in that (1) it involves

no application by the tenant to the Court, and (2) is free from the three months' time limit imposed by that sub-section, and (3) depends on the existence of a certificate, whereas under sect. 2 (2) of the principal Act other sufficient evidence of bad condition is permitted. As to the certificate and fee thereon, see sect. 18 (1) and (3), *post*, pp. 128, 129. As to the meaning of repair, see sect. 18 (5), *post*, p. 129.

6. *Notice of increase of rent.*—(1) The county court if satisfied that any error or omission in a notice of intention to increase rent, whether served before or after the passing of this Act, is due to a bonâ fide mistake on the part of the landlord shall have power to amend such notice by correcting any errors and supplying any omissions therein which if not corrected or supplied would render the notice invalid on such terms and conditions as respects arrears of rent or otherwise as appear to the court to be just and reasonable, and if the court so directs, the notice as so amended shall have effect and be deemed to have had effect as a valid notice.

(2) The form of notice in the First Schedule to the principal Act shall be amended by the substitution of the words "date of service of this notice" for the words "date of this notice."

An amendment under this Act would operate so as to make the notice equivalent to notice to quit under the Rent Restrictions (Notices of Increase) Act, 1923 (*Williams* v. *Britannic Merthyr Steam Coal Co., Ltd.*, (1924) W. N. 223). Only defects which would invalidate can be corrected, *e.g.*, the notice could not as a rule be antedated. A notice given under the 1915 Act (which contained no statutory form) was amended under this section in *Chandler* v. *Smart*, "Estates Gazette," April 19th, 1924. See further as to the effect of amendment, sect. 8 of this Act (*post*, p. 121).

It is noteworthy that only the County Court is given this power. For mode of application see Rule 3 of the 1923 Rules, *post*, p. 174.

7. *Permitted increases of rent of sub-tenancies.*—(1) Where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, then, in addition to any increases permitted by paragraphs (*a*) to (*e*) of sub-section (1) of section two of the principal Act, an amount

not exceeding ten per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of that dwelling-house, and an amount equivalent to five per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of the dwelling-house comprised in the tenancy.

Thus, if A. has let to a tenant, B., who has sub-let the first floor to C., B., in addition to the increases he is otherwise able to obtain from C., can increase C.'s rent by an additional 10 per cent. on the net rent of the first floor from C. But practically B. will only get half of this increase, for A., in his turn, will be entitled to increase B.'s rent by an additional 5 per cent. (again calculated on the net rent of the first floor).

And it would seem if C. sub-lets one room of the ground floor to D., then C. will be able to get from D. an additional 10 per cent. calculated on the net rent of the room in question, while B. will be able to get from C. an additional 5 per cent. on that rent.

But there will be no increase in virtue of this section—

(1) Where the sub-letting is unlawful. It will be recalled that whether a statutory tenant can sub-let is a matter of doubt (*ante*, p. 86).

(2) Where the sub-letting is of the whole house, *e.g.*, there would be no increase under this section in the illustration above if B. sub-let the whole house and not merely the first floor to C. Similarly, if the first floor being let to C., C. sub-let the whole of it to D., this section would not apply so as to enable B. or C. to obtain their respective increases. But it must be remembered that a sub-lease of the whole premises exposes to risks under sect. 5 (1) (h) of the principal Act. See also *Hicks* v. *Scarsdale Brewery Co.*, *ante*, p. 87.

(3) Where the sub-letting is not such in law. An arrangement with a lodger is sometimes loosely described as a letting or sub-letting, which, indeed, it may be, for lodger is not a word of precise legal significance, and is sometimes used of one who is strictly a tenant. But lodger, as used in contradistinction to the term tenant, denotes one who, though entitled by contract to use and occupation, has no legal interest in the premises. A tenant taking a lodger of this kind would, of course, not come within this section. The exact legal position of a person described as a lodger will, in practice, sometimes be a difficult question of fact.

It is, perhaps, worth pointing out that the lessor's right to increase by the 5 per cent. depends on the mere fact of the sub-letting—it could, if the necessary conditions are fulfilled, be claimed though the lessee is not in fact exacting his own 10 per cent. increase from the sub-tenant.

Where the premises are sub-let and this addition becomes payable, if the premises afterwards cease to be sub-let the increase authorised by this section will, according to the views expressed by the Court of Appeal in *Strickland* v. *Palmer* (*ante*, p. 26), cease to operate.

Subsection (2) of section three of the principal Act shall not apply as respects any increase permitted under this subsection.

Since no statutory notice of increase is required, the position as to these increases is not necessarily the same as that of the other permitted increases (see *ante*, p. 23), though it probably is for the most part the same. Presumably the landlord must give some sort of notice that this increase is exacted. It is not easy to say from what date the increase can be made to operate. The application of the first sub-section of sect. 3 of the principal Act is not ousted, and any existing tenancy (other than a statutory one (*Shuter* v. *Hersh*, (1922) 1 K. B. 438; *Felce* v. *Hill*, (1923) W. N. 235)) must therefore be first determined. There seems nothing, however, to prevent this increase on the rent of a statutory tenant from being made forthwith.

(2) Where part of any such dwelling-house is so sub-let the tenant shall, on being so requested in writing by the landlord, supply him, within fourteen days thereafter, with a statement in writing of any sub-letting, giving particulars of occupancy, including the rent charged, and should the tenant without reasonable excuse fail to do so or supply a statement which is false in any material particulars he shall be liable on summary conviction to a fine not exceeding two pounds.

(3) In subsection (6) of section two of the principal Act the expression "landlord" shall, in relation to a sub-tenancy, be taken to include not only the person who is immediate landlord of the sub-tenant but also the landlord of that person.

8. *Limitation on recovery of overpayments or arrears.*—(1) No increase of rent which becomes payable by reason of an amendment of a notice of increase made by order of the county court under this Act shall be recoverable in respect of

any rental period which ended more than six months before the date of the order.

The result is that if the tenant has not paid in accordance with a defective notice, on amendment the increase can only be recovered by the lessor in respect of the period six months prior to amendment. But the tenant, if he has paid, can recover all the overpayments (except in respect of the six months prior to amendment) in full without limit as to time (*Williams* v. *Britannic Merthyr Steam Coal Co., Ltd.*, (1924) W. N. 223).

(2) Any sum paid by a tenant or mortgagor which, under subsection (1) of section fourteen of the principal Act, is recoverable by the tenant or mortgagor shall be recoverable at any time within six months from the date of payment but not afterwards, or in the case of a payment made before the passing of this Act, at any time within six months from the passing of this Act but not afterwards.

Cp. note to sect. 19 (3) of the principal Act.

The effect of this sub-section seems to be that overpayments made after 31st July, 1923 (the coming into operation of the Act), are recoverable within six months after payment. Payments made before that date are no longer recoverable, ceasing so to be on January 31st, 1924. "Recoverable" refers to the institution of proceedings and not the obtaining judgment (*Lewis* v. *McKay*, *Algate* v. *Vugler*, *Clark* v. *Potter*, reported together 157 L. T. News. 325, followed by the Court of Appeal in *Diment* v. *Roberts*, Times Newspaper, July 24th, 1924). Since the day when the Act came into operation is excluded from the computation, proceedings to recover overpayments made before the Act were in time if commenced on January 31st, 1924 (*Truss* v. *Olivier*, 40 T. L. R. 588).

(3) Nothing in this section shall affect the operation of the Rent Restriction (Notices of Increase) Act, 1923.

See on this section generally, Article, 42 Law Notes, 278.

9. *Excessive charges for furniture, &c. taken over in connexion with tenancies.*—(1) Where the purchase of any furniture or other articles is required as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of a dwelling-house to which the principal Act applies, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and if the price exceeds the reasonable price of the articles, the excess shall be treated

as if it were a fine or premium required to be paid as a condition of the grant, renewal, or continuance, and the provisions of section eight of the principal Act, including penal provisions, shall apply accordingly.

(2) Where a tenant who by virtue of the principal Act retains possession of a dwelling-house to which that Act applies requires that furniture or other articles shall be purchased as a condition of giving up possession, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and if the price exceeds the reasonable price of the articles the excess shall be treated as a sum asked to be paid as a condition of giving up possession, and the provisions of subsection (2) of section fifteen of the principal Act (including penal provisions) shall apply accordingly.

For sects. 8 and 15 (2) of the principal Act, see *ante*, pp. 58, 87.

This section was thought necessary because the language of the sections in the principal Act was not considered quite large enough to cover the mischief aimed at.

10. *Amendment of provisions of the principal Act as to houses let with furniture, &c.*—(1) For the purposes of proviso (i) to subsection (2) of section twelve of the principal Act (which relates to the exclusion of dwelling-houses from the principal Act in certain circumstances), a dwelling-house shall not be deemed to be bonâ fide let at a rent which includes payments in respect of attendance or the use of furniture unless the amount of rent which is fairly attributable to the attendance or the use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent.

See *ante*, p. 71. The omission of any reference to board is curious having regard to the terms of the proviso to sect. 12 (2) of the principal Act.

(2) In sections nine and ten of the principal Act (which relate to limitation of rent of houses let with furniture and penalties for excessive charges for such lettings) the expressions

"landlord" and "tenant" shall respectively be substituted for the expressions "lessor" and "lessee."

For the sake, apparently, of uniformity.

11. *Power of county court to determine questions as to standard rent, &c.*—(1) The county court shall have power on the application of a landlord or a tenant to determine summarily any questions as to the amount of the rent, standard rent or net rent of any dwelling-house to which the principal Act applies, or as to the increase of rent permitted under that Act or this Part of this Act.

This overrules *Broomhall* v. *Property Owners and Agents, Ltd.*, (1922) 1 K. B. 311, where it was held that there was no power under sect. 2 (6) of the principal Act to determine the amount of the standard rent as an abstract question. See as to the scope of this section, observations of Scrutton, L.J., in *Bourne* v. *Litton*, (1924) 2 K. B. 10.

(2) The Lord Chancellor may, by rules and directions made and given under section seventeen of the principal Act, provide for any questions arising under or in connection with the principal Act or this Part of this Act being referred by consent of the parties interested for final determination by the judge or registrar of a county court sitting as an arbitrator or by an arbitrator appointed by such judge.

See Rule 4 of the 1923 Rules, *post*, p. 174.

PART II.

RESTRICTIONS AFTER EXPIRY OF PRINCIPAL ACT.

12. *Restriction on right to possession in certain cases after the expiry of the principal Act.*—(1) If proceedings are taken against the person who on the twenty-fourth day of June, nineteen hundred and twenty-five, is tenant of a dwelling-house to which the principal Act then applies (hereinafter referred to as "the sitting tenant") for the recovery of possession of the dwelling-house or for the ejectment of the tenant

therefrom at any time after that day, should it appear to the court that the proceedings are harsh or oppressive or that exceptional hardship would be caused to the sitting tenant by the making or giving of an order or judgment for possession or ejectment, the court may refuse to make or give such an order or judgment or may adjourn the application for or stay or suspend execution of any such order or judgment or postpone the date of possession for such period or periods, and subject to such conditions as it thinks proper, and if such conditions are complied with the court may, if it thinks fit, discharge or rescind any such order or judgment.

(2) For the purpose of the exercise of its jurisdiction under this section, the court may direct that the tenancy of the sitting tenant shall be treated as a subsisting tenancy notwithstanding the determination of the same by any notice to quit or similar notice or otherwise and may set aside and annul any such notice accordingly, and shall have power to determine what increase of rent (if any) is fair and reasonable, regard being had to the character and condition of the dwelling-house and the rents of similar dwelling-houses in the locality.

(3) The court shall not exercise any of the powers given to it under the foregoing provisions of this section in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it.

(4) In any such proceedings an order or judgment for possession or ejectment against the sitting tenant of the dwelling-house shall not, unless the court otherwise directs, be operative against a sitting tenant of a part of the dwelling-house which, on the twenty-fourth day of June, nineteen hundred and twenty-five, is lawfully sub-let to him and is a separate dwelling-house to which the principal Act applies, and the court shall in relation to that part of the dwelling-house and the sitting tenant thereof have all the like powers and jurisdiction as it has in relation to the whole dwelling-house and the sitting tenant thereof.

(5) In order to assist the court in the determination of

Sect. 12] (Operative after June 24th, (1925)

questions arising under this part of this Act in relation to the rent, character or condition of dwelling-houses, the Minister of Health may establish reference committees to whom such questions may be referred by the court for consideration and report.

(6) The foregoing provisions of this section shall not apply to proceedings against a sitting tenant under the Small Tenements Recovery Act, 1838, and any such proceedings shall, on the application of the sitting tenant, be discontinued, subject to any provision that may be made by rules under this Part of this Act for transfer to the county court.

It must be carefully noted that this section and sects. 13-17 will only operate after June 24th, 1925 (in Scotland May 28th, 1925, sect. 19, *post*).

From the above dates all houses become decontrolled in the sense that the main provisions of this legislation cease to operate. But there will remain a modified protection under Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, not, indeed, for the house, but for the sitting tenant of a house still in control on June 24th, 1925. The sitting tenant or sub-tenant, however, of a house already decontrolled on that date under sect. 2 of the Rent and Mortgage Interest Restrictions Act, 1923, *e.g.*, of a house which had already come into the landlord's actual possession at that date, will not enjoy even this modified protection. Where it is enjoyed it will last till June 24th, 1930, unless in virtue of a resolution of both Houses it is earlier repealed by Order in Council.

This modified protection, in cases where it is applicable, takes the following form:—

(1) Proceedings before the justices under the Small Tenements Recovery Act, 1838, will not be available.

(2) Other Courts will have power to refuse or postpone possession, annul notices to quit, and adjust rent provided (1) the proceedings are harsh or oppressive or the case of exceptional hardship, and (2) it is not greater hardship to refuse than to make the order.

(3) Ejectment against the sitting tenant will not be effective against the sitting sub-tenant unless the Court expressly so order, and the sub-tenant may be given the benefit of this modified protection though it is refused the tenant.

(4) The Court is given power to reduce the rent of the sitting tenant or sitting sub-tenant pending execution of repairs.

(5) Provision is made for the establishment of "Reference Committees" to assist the Court in administering its power as to this modified protection.

13. *Reduction of rent pending the execution of repairs.*—(1) If the county court on the application of a sitting tenant is satisfied by the production of a certificate of the sanitary authority and such further evidence (if any) as may be adduced that the dwelling-house is not in a reasonable state of repair and that the condition of the dwelling-house is not due to the tenant's neglect or default or breach of express agreement, the court may order that the rent shall be reduced until the court is satisfied on the report of the sanitary authority or otherwise that the necessary repairs (other than any repairs for which the tenant is liable) have been executed, and subject to the terms of the order the rent shall be payable at such reduced rate as may be specified therein until the court is so satisfied.

(2) The powers of the county court under this section may be exercised by the court in any proceedings against a sitting tenant to which the last preceding section of this Act applies.

14. *Restriction on calling in of mortgages.*—(1) Where a dwelling-house in the occupation of a sitting tenant is subject to a mortgage to which the principal Act applied, the county court may, on the application of the landlord, make an order restraining the mortgagee from calling in his mortgage or taking steps for enforcing his security or for recovering the principal money thereby secured, if it is satisfied that such calling in, enforcement or recovery would cause exceptional hardship to the landlord. The county court may, on the application of the mortgagee or landlord rescind or vary any order so made if satisfied that by reason of any material change in circumstances, rescission or variation is necessary or proper.

(2) The restrictions imposed on a mortgagee by an order under this section may be imposed subject to such conditions as regards increase of interest or otherwise and for such time as appears to the court to be proper, but so nevertheless that the

Sect. 14]

restrictions shall cease to be operative if at any time after the making of the order—

(a) interest is more than twenty-one days in arrear; or

(b) any covenant by the mortgagor (other than the covenant for the repayment of the principal money secured) is broken or not performed; or

(c) the mortgagor fails to keep the property in a proper state of repair or to pay the interest and instalments of principal recoverable under any prior encumbrance; or

(d) the sitting tenant ceases to be tenant of the dwelling-house.

(3) This section shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage.

15. *Regulations as to reference committees.*—(1) The constitution and procedure of reference committees established under this Part of this Act shall be such as may be prescribed by regulations made by the Minister of Health.

(2) In addition to any questions that may be referred to a reference committee by the county court under this Part of this Act, provision may be made by the regulations for the reference to and determination by a reference committee of any questions in relation to the rent payable or to be paid by a sitting tenant which may be submitted to them by the tenant and landlord.

(3) Before any regulation under this section is made, it shall be laid in draft before both Houses of Parliament, and such regulation shall not be made unless both Houses by resolution approve the draft, either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the Minister of Health may make the regulation in the form in which it

has been approved, and the regulation on being so made shall be of full force and effect.

16. *Rules as to procedure.*—The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving full effect to the provisions of this Part of this Act relative to legal proceedings.

17. *Duration of Part II.*—This Part of this Act shall continue in force until the twenty-fourth day of June, nineteen hundred and thirty:

Provided that if a resolution is passed by both Houses of Parliament for the repeal of this Part of this Act on some earlier date, it shall be lawful for His Majesty in Council to repeal this Part of this Act on such date as may be specified in that behalf in the resolution.

PART III.

GENERAL.

18. *Certificates of sanitary authorities and definition of repairs.*—(1) For the purposes of the principal Act and this Act, a certificate of a sanitary authority as to the condition of a dwelling-house shall specify what works (if any) require to be executed in order to put the dwelling-house into a reasonable state of repair, and on any application to a sanitary authority for a certificate or report for the purposes aforesaid a fee of one shilling shall be payable, but if the authority, as a result of such application, issues a certificate to a tenant, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(2) On any application to a county agricultural committee for a certificate for the purpose of paragraph (ii) of subsection (1) of section five of the principal Act, a fee shall be payable by the applicant to the county agricultural com-

mittee of such amount as the Minister of Agriculture and Fisheries shall by regulation determine.

By the Rent Restrictions (Fee) Regulations, 1924, dated February 19th, 1924 (S. R. & O. 1924, No. 168), this fee was fixed at such sum not exceeding two guineas as the Committee in accordance with any directions given by the County Council may in each case require.

(3) An instrument purporting to be a certificate or report of a sanitary authority or of a county agricultural committee and to be signed by an officer of the authority or committee shall, without further proof, be taken to be a certificate or report of the authority or committee unless the contrary is proved.

(4) A sanitary authority may appoint a committee for the purposes of the principal Act and this Act, and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under the principal Act or this Act.

(5) For the purposes of this Act the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

The meaning of "good and tenantable repair" in a repairing covenant was, in *Proudfoot* v. *Hart*, 25 Q. B. D. 42, defined as such repair as, having regard to the age, character and locality of the house, would make it reasonably fit for the class of tenant who would be likely to take it. But this test was held by the Court of Appeal in *Calthorpe* v. *McOscar*, (1924) 1 K. B. 716, to apply only to short lettings where the hypothetical tenant would be the same both at the beginning and end of the lease. See this last case for further discussion of the meaning of "good and tenantable repair" contained in a repairing covenant by a tenant. Under such a covenant the scope of the tenant's liability is not diminished by reason of deterioration in the neighbourhood. The result is that it is not easy to define very precisely the expression as contained in a covenant, nor is it perhaps quite certain that the expression as used in the sub-section must necessarily receive the same interpretation as in a covenant.

19. *Application to Scotland.*—This Act shall apply to Scotland subject to the following modifications:—

(*a*) The twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the Scottish Board of Health shall be substituted for the Minister of Health; references to the registrar of a county court shall not apply; and "exciseable liquor" shall be substituted for "intoxicating liquor";

(*b*) For removing doubts it is hereby declared that nothing in the principal Act affects the operation of the House Letting and Rating (Scotland) Act, 1920, and the reference in subsection (2) of section one of the last mentioned Act to the provisions of Acts repealed by the principal Act shall be construed as a reference to the provisions of section three of the principal Act.

20. *Short title, construction and extent.*—This Act may be cited as the Rent and Mortgage Interest Restrictions Act, 1923, and shall be construed as one with the principal Act, save that this Act shall not apply to Ireland, and the principal Act, the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, the Rent Restrictions (Notices of Increase) Act, 1923, and this Act may be cited together as the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923.

PREVENTION OF EVICTION ACT, 1924.

14 & 15 GEO. 5.

An Act to prevent unreasonable eviction of tenants.

[14th July, 1924.]

1. *Amendment of* 13 *&* 14 *Geo.* 5, *c.* 32, *s.* 4, *ss.* (1).—Paragraphs (iv) and (v) of subsection (1) of the section which by section four of the Rent and Mortgage Interest Restrictions Act, 1923, is substituted for section five of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, are hereby repealed as respects pending as well as future proceedings, and the following paragraph shall be substituted therefor:

(iv) Where the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May, nineteen hundred and twenty-four) for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the Court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

This clause has been incorporated above in sect. 5 of the principal Act, *ante*, pp. 49 and 50, where its effect is discussed. See also note to next section.

2. *Application of Act to pending proceedings.*—(1) Where any order or judgment has been made or given before the passing of this Act, but not executed, and in the opinion of the

Court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the Court, on application by the tenant, may rescind or vary the order or judgment in such manner and subject to such conditions as the Court shall think fit for the purpose of giving effect to this Act.

The position of a landlord seeking possession under sect. 5 (1) (d) of the principal Act on the ground that he requires the house for his own occupation or that of a son or daughter over eighteen will largely depend on the clause contained in sect. 1 of the present Act. This clause replaces both of the two clauses now repealed which were contained in sect. 4 of the Rent and Mortgage Interest Restrictions Act, 1923, and which will be found printed *post*, p. 150.

The result was that before the present Act, a landlord seeking possession on the grounds mentioned was never required to prove alternative accommodation; the only questions for the Court were whether it was reasonable to order ejectment and whether there would be greater hardship in granting than in refusing to do so. If the landlord or husband or wife of the landlord became so before June 30th, 1922, the only question was whether it was reasonable to give possession—the balance of hardship did not come into consideration. The present position (as a result of sect. 1 of this Act) is that where possession is sought for the landlord's own occupation or that of his son or daughter, in addition to the invariable condition that the Court must think it reasonable to make the order, it will be essential to show alternative accommodation if the landlord became so by purchasing the dwelling-house after May 5th, 1924. If he did not so become landlord, it is not incumbent to show alternative accommodation, but the Court must be satisfied that it is reasonable to make the order, taking into account on the question of reasonableness whether there is available alternative accommodation not only for the tenant but also for the lessor.

In other words, where a landlord seeks possession for personal occupation, or occupation by a child of his, the existence of alternative accommodation is always a factor for consideration, and if the landlord became so by purchase after May 5th, 1924, it is an absolutely essential condition for ejectment. The present Act, therefore, makes it more difficult for the landlord to obtain possession for personal residence or as a residence for children, and this section meets the case where an order for ejectment was made under the repealed clauses which would not have been made had the present one been already in force. It will be noted that the power of rescission or variation hereby given is purely discretionary. It need not be exercised, and if exercised may be exer-

cised subject to conditions. It will be observed further that this power of rescinding or varying orders for possession already made will only arise where the order has not been already executed before the commencement of this Act, viz., July 14th, 1924.

(2) Where a landlord has, on or after the fifteenth day of April, nineteen hundred and twenty-four, taken possession of a dwelling-house under a judgment or order so rescinded as aforesaid, such possession shall not in any case exclude the dwelling-house from the operation of the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923.

The intention of this sub-section is to prevent possession by the landlord in the circumstances mentioned producing decontrol under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, *ante*, p. 112.

Since, as mentioned in the note to the last sub-section, the order cannot be rescinded if it was executed before July 14th, 1924, the reference to April 15th, 1924, is a little difficult to follow. The power of rescinding orders given by the last sub-section, as contained in the original Bill when it left the Commons, was made exerciseable even though the order had been executed, unless it had been executed before April 15th, 1924. The Bill was amended in the Lords by making the commencement of the Act the critical date. Presumably, by an oversight, the drafting of the present sub-section was left unaltered. It would, no doubt, cover a case where after judgment for possession the tenant gives up possession in obedience thereto and without execution issued.

3. *Short title.*—This Act may be cited as the Prevention of Eviction Act, 1924, and shall be construed as one with the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923, and those Acts and this Act may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924.

APPENDIX I.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.

5 & 6 Geo. 5, c. 97.

An Act to restrict, in connection with the present War, the Increase of the Rent of Small Dwelling-houses and the Increase of the Rate of Interest on, and the Calling in of, Securities on such Dwelling-houses. [23rd December, 1915.

1. *Restriction on raising rent or rate of mortgage interest.*—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as herein-after defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that—

(i) This subsection shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November nineteen hundred and fifteen; and

(ii) Where the landlord has since the commencement of the present war incurred, or during the continuance of this Act incurs, expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act; and

(iii) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically pay-

able by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive; and

(iv) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half yearly or other period which included the third day of August nineteen hundred and fourteen, and for the purposes of this proviso the expression "rates" includes water rents and charges; and

(v) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August nineteen hundred and fourteen, such increase shall not be deemed to be an increase for the purposes of this Act; and

(vi) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(a) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

(b) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

(c) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent, and where any such payment has been made

Sect. 1]

in respect of any such dwelling-house after the twenty-fifth day of November nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment under an agreement entered into before the fourth day of August nineteen hundred and fourteen.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the standard rate is paid and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was at the twenty-fifth day of November nineteen hundred and fifteen a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage:

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be

called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

2. *Interpretation and application.*—(1) For the purposes of this Act except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

(b) The expression "standard rate of interest" means in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest:

(c) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed:

(d) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor:

(e) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

(a) in the case of a house situate in the metropolitan police district, including therein the City of London, thirty-five pounds;

(b) in the case of a house situate in Scotland, thirty pounds; and

(c) in the case of a house situate elsewhere, twenty-six pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the pro-

Sect. 2]

perty in which that dwelling-house is comprised, a county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(b) to an equitable charge by deposit of title deeds or otherwise.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

(6) Where the standard rent payable in respect of any tenancy of a dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house.

3. *Rules as to procedure.*—The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

4. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications:—

"Mortgage and incumbrance" mean a heritable security; "fine" means grassum or consideration other than rent; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "committed waste" means "wilfully destroyed the property"; "land" means lands and heritages; "enactments relating to compounding" include the House-letting and Rating (Scotland) Act, 1911; "rate" means assessment as defined in the last-mentioned Act; "Lord Chancellor" means the Court of Session; "rules" means act of sederunt; and "county court" means the sheriff.

(2) This Act shall apply to Ireland subject to the following modifications:—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor;

(b) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891;

(c) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise.

5. *Short title and duration.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

COURTS (EMERGENCY POWERS) ACT, 1917.

7 & 8 Geo. 5, c. 25.

4. *Power to accept premiums on leases for twenty-one years or upwards.*—(1) Subsection (2) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall not apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

(2) Section two of the Courts (Emergency Powers) (No. 2) Act, 1916, is hereby repealed.

5. *Provisions as to sums made irrecoverable by 5 & 6 Geo. 5, c. 97.*—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, the sum so paid shall at any time within six months after the date of payment, or, in the case of a payment made before the passing of this Act, within six months after the passing thereof, be recoverable from the landlord

Sect. 5]

or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by such tenant or mortgagor from any rent or interest payable within such six months by him to such landlord or mortgagee.

(2) If any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the said Act is irrecoverable, or if, where any such entry has before the passing of this Act been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to delete the entry, he shall on summary conviction be liable to a fine not exceeding ten pounds.

(3) This section shall be construed as one with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

7. *Provision as to leases at less than rack rent.*—In subsection (6) of section two of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which relates to tenancies at less than rack rent, the word "standard" shall be omitted, and at the end of the subsection there shall be inserted the following words "and this Act shall apply in respect of such dwelling-house "as if no such tenancy existed or had ever existed."

INCREASE OF RENT, &c. (AMENDMENT) ACT, 1918.

8 Geo. 5, c. 7.

1. *Restriction of meaning of landlord in 5 & 6 Geo. 5, c. 97, s. 1 (3).*—Subsection (3) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall have effect as if at the end thereof the following provision was inserted:—

> "For the purposes of this subsection the expression 'landlord' shall not include any person who since the thirtieth day of September nineteen hundred and seventeen has become landlord by the acquisition of the dwelling-house or any interest therein otherwise than by the devolution thereof to him under a settlement made before the said date, or under a testamentary disposition or an intestacy,"

and the provisions of the said subsection with respect to orders made but not executed before the passing of that Act, shall apply to orders made but not executed before the passing of this Act, as if this Act had been substituted for that Act in the said subsection:

Provided that this enactment shall not apply in any case where the Court is satisfied by certificate given by or on behalf of the Board of Agriculture and Fisheries (or as regards premises in Scotland by the Board of Agriculture for Scotland, or in Ireland the Department of Agriculture and Technical Instruction for Ireland) that the premises in question are required for the occupa-

tion of a person engaged or employed in agricultural work of urgent national importance.

2. *Short title.*—This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1918.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1919.

9 Geo. 5, c. 7.

An Act to extend, amend and prolong the duration of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending that Act. [2nd April, 1919.

1. *Prolongation of duration of principal Act.*—The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter referred to as the "principal Act"), and the enactments amending that Act, shall continue in force until Lady Day nineteen hundred and twenty-one, but during the period (hereinafter referred to as "the extended period") between the time when but for this Act the principal Act would have expired and the said Lady Day the principal Act shall have effect subject to the modifications contained in the two next succeeding sections.

2. *Limited power of increasing rents during the extended period.*—(1) An increase in the rent of a dwelling-house to which the principal Act applies payable in respect of the extended period or any part thereof which would but for the principal Act be recoverable, shall be recoverable if or so far as the amount of the increase does not exceed ten per centum of the standard rent:

Provided that no such increase shall be due or recoverable if the sanitary authority of the district in which the house is situate on the application of the tenant certifies that the house is not reasonably fit for human habitation or is not kept in a reasonable state of repair, nor in any case until or in respect of any period prior to the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, and informing the tenant of his right to apply to the sanitary authority for such a certificate as aforesaid.

(2) On any such application to a sanitary authority a fee of one shilling shall be payable, but if the authority, as a result of the application, issues such a certificate as aforesaid the tenant shall be entitled to deduct the amount of the fee from any subsequent payment of rent.

(3) The increase of rent permitted by this section shall be in addition to any increase permitted by section one of the principal Act.

3. *Limited power of increasing rate of mortgage interest.*—Nothing in the principal Act shall prevent an increase in the rate of interest payable in respect of the extended period on a mortgage

Sect. 3]

to which the principal Act applies, if the increase does not exceed one half per centum per annum, and the rate when so increased does not exceed five per centum per annum, and subsection (4) of section one of the principal Act shall apply as if the reference therein to the standard rate included a reference to such increased rate.

4. *Extension of principal Act to higher-rented houses.*—As from the passing of this Act, the principal Act and the enactments amending that Act shall extend to houses or parts of houses let as separate dwellings where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where—

(a) in the case of a house situated in the metropolitan police district, including the City of London, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty-five pounds, and neither exceeds seventy pounds;

(b) in the case of a house situated in Scotland, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty pounds, and neither exceeds sixty pounds;

(c) in the case of a house situated elsewhere, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed twenty-six pounds, and neither exceeds fifty-two pounds;

and shall also extend to mortgages (not being mortgages to which the principal Act as originally enacted applies), where the mortgaged property consists of or comprises one or more of such dwelling-houses as aforesaid or any interest therein, subject, however, to the exceptions mentioned in subsection (4) of section two of the principal Act, but in the application to those houses and mortgages the principal Act and the enactments amending that Act shall have effect, subject to the following modifications:—

(i) for subsection (1) of section one of the principal Act, exclusive of the provisoes to that subsection, the following provisions shall be substituted:—

Where the rent of a dwelling-house to which this Act applies or the rate of interest on a mortgage to which this Act applies has been since the twenty-fifth day of December nineteen hundred and eighteen, or is hereafter increased and such increase would apart from this Act have been recoverable, then, if the increased rent exceeds by more than ten per centum the standard rent, or the increased rate of interest exceeds by more than one half per centum per annum the standard rate, the amount of such excess above the said ten per centum or one half per centum, as the case may be, shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be, and, if paid, may be recovered by the tenant or mortgagor in

the manner and subject to the provisions of subsection (1) of section five of the Courts (Emergency Powers) Act, 1917;

(ii) in proviso (i) to subsection (1) and subsections (2) and (4) of section one of the principal Act the fourth day of March nineteen hundred and nineteen shall be substituted for the twenty-fifth day of November nineteen hundred and fifteen;

(iii) in subsection (3) of section one of the principal Act references to the date of the passing of the principal Act shall be construed as references to the date of passing of this Act;

(iv) in subsection (4) of section one of the principal Act for the reference to the standard rate there shall be substituted a reference to the rate permitted by this section;

(v) at the end of paragraph (a) of subsection (1) of section two of the principal Act there shall be inserted the following proviso:—

Provided that, if the rateable value of the dwelling-house on the said third day of August exceeds the standard rent as so defined, that rateable value shall, as respects that house, be deemed to be the standard rent.

5. *Minor amendments of the principal Act.*—(1) A landlord of a house to which the principal Act, either as originally enacted or as extended by this Act, applies shall, on being so requested by the tenant of the house, furnish to him a statement as to what is the standard rent of the house, and if he fails within fourteen days to do so, or furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten pounds.

(2) Where a person who has, since the thirtieth day of September nineteen hundred and seventeen, purchased a house to which the principal Act, either as originally enacted or as extended by this Act, applies, requires the house for his own occupation or that of some person in his employ, or in the employ of some tenant from him, nothing in the Increase of Rent, &c. (Amendment) Act, 1918, shall be construed as preventing the court from making an order for the recovery of possession of the house, if, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, the court considers it reasonable to make such an order.

(3) The principal Act, both as originally enacted and as extended by this Act, shall have effect as if in proviso (vi) to subsection (1) of section one of that Act after the word "until" there were inserted the words "or in respect of any period prior to."

(4) Any rooms in a dwelling-house the subject of a separate letting as a dwelling shall, for the purposes of the principal Act and this Act, be treated as a part of a house let as a separate dwelling.

Sect. 6]

6. *Limitation on rent of houses let furnished.*—(1) Where the occupier of a dwelling-house to which the principal Act, either as originally enacted or as extended by this Act, applies, lets, or has, before the passing of this Act, let the house or any part thereof at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged yields to the occupier a profit more than twenty-five per centum in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per centum, shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee, and, without prejudice to any other method of recovery, may be recovered by him by means of deductions from any subsequent payments of rent.

(2) For the purpose of this section "normal profit" means the profit which might reasonably have been obtained from a similar letting in the year ending on the third day of August, nineteen hundred and fourteen.

7. *Amendment of definition of standard rent.*—At the end of paragraph (a) of subsection (1) of section two of the principal Act, the following words shall be inserted:—

> Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent.

8. *Exception of new houses.*—Neither the principal Act nor this Act shall apply to houses erected after or in course of erection at the passing of this Act.

9. *Application of Act to Scotland.*—In the application of this Act to Scotland—

(a) the twenty-eighth day of May shall be substituted for Lady Day and the local authority under the Public Health (Scotland) Act, 1897, shall be substituted for the sanitary authority;

(b) as from the commencement of the extended period the principal Act shall be amended by the insertion in proviso (iv) of subsection (1) of section one, after the word "dwelling-house" where first occurring therein, of the words "or where by the law of Scotland owners' rates are chargeable on the landlord of any dwelling-house."

10. *Application of Act to Ireland.*—In the application of this Act to Ireland—

(a) the first day of May shall be substituted for Lady Day in the case of tenancies where the former day is the gale day;

(b) the medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two

of this Act, and the issue of certificates and the payment of fees in connexion with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland.

11. *Short title and construction.*—This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and shall be construed as one with the principal Act.

INCREASE OF RENT, &c. (AMENDMENT) ACT, 1919.

9 & 10 Geo. 5, c. 90.

1. *Orders for possession.*—(1) After the passing of this Act no order or judgment for the recovery of possession of a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter called the principal Act) or any of the Acts amending the same applies, or for the ejectment of a tenant therefrom, shall be made or given, so long as the tenant continues to pay rent at the agreed rate as modified by the principal Act or any of the Acts amending the same and performs the other conditions of the tenancy, unless—

(a) the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, and the court considers it reasonable to make such an order or give such judgment; or

(b) the tenant, by sub-letting the dwelling-house or any part thereof, or by taking in lodgers, is making a profit which, having regard to the rent paid by the tenant, is unreasonable, and the court considers it reasonable to make such an order or give such judgment; or

(c) the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, and the court, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, considers it reasonable to make such an order or give such judgment.

(2) At the time of making any order or giving any judgment for the recovery of possession of any such dwelling-house or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may, if the order or judgment was made or given on the ground that the premises were reasonably required as aforesaid, stay or suspend execution thereof, or postpone the date of possession, for such period or periods as it shall think fit,

Sect. 1]

either unconditionally or subject to such conditions in regard to payment by the tenant of rent or mesne profits and otherwise as the court shall think fit, and, if such conditions are complied with, the court may, if it shall think fit, discharge or rescind such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and in the opinion of the court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, every warrant for delivery of possession of a dwelling-house to which the principal Act or any Act amending the same applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, and for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) This Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(6) In the application of this section to Scotland a reference to profits shall be substituted for the reference to mesne profits.

2. *Short title, construction and repeal.*—(1) This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1919, and shall remain in force until the first day of July nineteen hundred and twenty, and shall be construed as one with the principal Act.

(2) The enactments set out in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5, c. 97.	Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.	S. 1 (3).
8 Geo. 5, c. 7	Increase of Rent, &c. (Amendment) Act, 1918	The whole Act.
9 Geo. 5, c. 7	Increase of Rent and Mortgage Interest Restrictions) Act, 1919.	S. 5 (2).

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

10 & 11 Geo. 5, c. 17.

[Sect. 5 of this Act is now replaced by a substituted section under sect. 4 of the Rent and Mortgage Interest Restrictions Act, 1923, as amended by the Prevention of Eviction Act, 1924. It is (save for some sub-sections which remain the same in the substituted section) here reprinted for convenience of reference.]

5. *Restriction on right to possession.*—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant threfrom, shall be made or given unless—

(a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

(b) the tenant or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person; or

(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

(d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person bonâ fidé residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available; or

Sect. 5]

(e) the landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the court is satisfied as aforesaid as respects alternative accommodation; or

(f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

(g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war;

and, in any such case as aforesaid, the Court considers it reasonable to make such an order or give such judgment.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this subsection—

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding; or

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

(iv) where the landlord became the landlord before the thirtieth day of September nineteen hundred and seventeen, or, in the case of a dwelling-house to which section four of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (8 & 9 Geo. 5, c. 7), applied, became the landlord before the fifth day of March, nineteen hundred and nineteen, or in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, became the landlord before the twentieth day of May nineteen hundred and twenty, and in the opinion of the court greater hardship would be caused by refusing an order for possession than by granting it.

(2) (3) (4) and (5) These subsections retain their original shape in the substituted sections and will be found *ante*, p. 49 *et seq.*

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

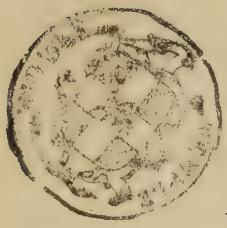
RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923.

13 & 14 Geo. 5, c. 32.

[Sect 4 of this Act substituted a fresh sect. 5, replacing the original sect. 5 in the principal Act. This substituted section is printed *ante*, pp. 37 *et seq.*, except that on p. 49, *ante*, a clause introduced by the Prevention of Eviction Act, 1924, appears in place of the two following clauses now repealed and here printed for convenience of comparison.]

(iv) where the landlord or the husband or wife of the landlord became the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age; or

(v) where the landlord or the husband or wife of the landlord did not become the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.



APPENDIX II.

STATUTORY RULES AND ORDERS,

1920, No. $\frac{1261}{\text{L. 37}}$.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS), ENGLAND.

County Court Procedure.

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) RULES, 1920, DATED JULY 9, 1920, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 GEO. 5, c. 17).

Preliminary.

The following Rules under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (in these Rules referred to as the Act), shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, and shall come into operation on the 15th day of July, 1920.

On the coming into operation of these Rules the following Rules, viz.:—

The Increase of Rent and Mortgage Interest (War Restriction) Rules, 1916, dated the 29th January, 1916, and the like Rules, 1919, dated the 21st May, 1919, shall be annulled without prejudice to anything done thereunder, and these Rules shall apply to all proceedings pending under the Rules hereby annulled on the day when these Rules come into operation.

[Rule 1

Applications under Section 2; *Section* 9; *Section* 12, *subsection* (1 *g*) *or* (3); *Section* 6; *or Section* 5, *subsection* (6).

1. An application to the county court under the Act—

(a) to determine any question or make any order or declaration relating to increase of rent under section 2, or section 9; or

(b) to apportion the rent or rateable value of the property under subsection 3 of section 12; or

(c) for leave to distrain under section 6; or

(d) by a member of the tenant's family under section 12, subsection (1 *g*); or

(e) for compensation under section 5, subsection (6);

may be made in the case of (e) to the court in which the order or judgment complained of was obtained, and in all other cases to the court in the district of which the premises are situate.

2.—(1) An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to section 7, may be made—

(a) to the court in the district of which the mortgaged property is situate; or

(b) to the court in the district of which the mortgagor resides or carries on business; or

(c) if the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in the district of which the mortgagee resides or carries on business, or to the court in the district of which the mortgagor resides or carries on business.

3.—(1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules and the County Courts (Emergency Powers) Rules as to applications to the High Court or to the county court for leave to foreclose or realize any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies: and this Rule shall apply in lieu thereof.

(2) An application under the last preceding Rule for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest shall if and so far as an application for leave to foreclose or realize the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclose or realize the security under that Act, and no separate application under that Act shall be necessary.

Rule 3]

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, does not apply, but that leave to realize or enforce the security is required under the Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realize the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, and those Rules shall apply accordingly; but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realize the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

4. An application under these Rules (other than the applications referred to in rules 19 and 20) shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920."

Preparation, Filing, &c. of Summonses.

5. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office; and the registrar shall examine, complete, seal, and sign the summons and copies, and return the copies to the applicant for service.

Service and Substituted Service.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service. On an application by the Sanitary Authority under section 2, subsection (2) notice in writing of the summons shall be given to the tenant by the Sanitary Authority.

(2) Service shall be effected in accordance with the provisions of Order LIV., Rules 2 and 3, of the County Court Rules as to service of notice of an interlocutory application.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under these Rules.

[Rule 7

Applications to Registrar.

7. Any application under these Rules may be made to the registrar, subject to the following provisions:—

(a) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge:

(b) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just:

(c) An application for such variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

Evidence in Support of Application.

8. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

Power to hear Cases in Private.

9. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Transfer of Proceedings.

10. If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court; and in any such case the provisions of section 85 of the County Courts Act, 1888, and section 10 of the County Courts Act, 1919, and of Order VIII., Rule 9, of the County Court Rules shall apply.

Decisions of Court.

11. On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

(a) in the case of an application under section 2 or section 9 or section 5, subsection (6) determine the question raised or make or refuse the order or declaration asked for; or

(b) in the case of an application under subsection (3) of section 12 apportion the rent or rateable value; or

(c) in the case of an application under section 6 give or refuse leave; or

(d) in the case of an application under section 7 make or refuse

Rule 11]

an order authorising the mortgagee to call in or enforce the mortgage; or

(e) in the case of any application make such other determination, order or declaration in the matter as the court shall think fit.

Power to impose Conditions.

12. On an application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

Certificates, Orders or Declarations on Applications.

13. When the court has given its decision on any application a certificate of the determination of the court, or an order or declaration in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it shall not be necessary for the party in whose favour a certificate or order or declaration is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

General Provisions as to Procedure on Applications.

14. Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act.

15.—(1) The following fees shall be payable under Schedule B, Part I., of the Treasury Order regulating Fees in the County Courts, on applications under the Act and these Rules, in lieu of all other fees on such proceedings, viz.:—

	s.	*d.*
On an application for an order or declaration or the determination of a question relating to the increase of rent of premises or for leave to distrain—		
6*d.* in the £ or part of a £, calculated on 4 weeks' standard rent (or on an application under section 9 the actual rent) of the premises, or in the case of leave to distrain on the rent to be distrained for, but not exceeding	2	6
On an application for the apportionment of rent or rateable value or for compensation under section 5, subsection 6	10	0
On an application for an order authorising a mortgagee to call in and enforce a mortgage	20	0

[Rule 15

The foregoing fees shall include drawing, sealing, and issuing the certificate or order (*except in the case of an application for leave to distrain, in which case there shall be payable for drawing, sealing and issuing the order (if any) a further fee of 6d. in the £ or part of a £ on the rent to be distrained for not exceeding 2s. 6d.*),* and the fee prescribed by paragraph 12 of Part I. of Schedule B of the Fees Order shall not be taken.

(2) On summonses to witnesses, the fees prescribed by Schedule A of the Fees Order shall be taken.

(3) On applications for discovery or inspection of documents, and on applications for rescission or variation of orders or judgments under section 5, subsection 3, the fees prescribed by paragraphs 10 and 12 of Part I. of Schedule B of the Fees Order shall be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

Costs.†

16.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for an amount equal to—

(a) in the case of an application for an order or declaration or determination of a question relating to the increase of rent, or for leave to distrain, the amount on which fees are payable under Rule 15; or

(b) in the case of an application to apportion rent or rateable value, one-half of the annual rent or rateable value apportioned to the premises; or

(c) in the case of an application for an order authorising a mortgagee to call in and enforce the mortgage, the amount of the principal sum secured: Provided that Column B of the Scale shall apply in all cases above twenty pounds, to the exclusion of Column C.

(3) Where the amount does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

	s.	*d.*
If the amount exceeds £2 but does not exceed £5	6	8
If the amount exceeds £5 but does not exceed £10	10	0

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* Italicised words inserted by statutory rule and order, 1921, No. $\frac{932}{L\ 12}$.

† By Treasury Order of April 29th, 1921, the following amendment of the Treasury Order of December 30th, 1903, is made:—

"26B. For the extension of a warrant for recovery of possession under subsection (4) of section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, sixpence in the pound on the amount of the rent upon which the poundage is calculated under paragraphs 33, 34, and 35 of this Schedule."

Rule 16]

(4) In the case of an application for compensation under section 5, subsection 6, the court may either fix the amount of such costs or allow them on the scale applicable in an action.

(5) In the case of any other application the Court shall fix the amount of such costs.

(6) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they shall be included in the security; and any order directing payment of costs shall be included in the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

Forms.

17.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, applications, certificates and orders under the Act and these Rules.

(2) The registrar of any Court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

Proceedings for the Recovery of Rent or Mortgage Interest, or for the Recovery of Possession of Tenements or Ejectment of Tenants.

18. Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant from any such premises, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of the Act.

Death of Tenant Intestate.

19. Where, on the death of a tenant intestate, a member of his family requires the decision of the Court under the latter part of section 12, subsection 1 (g) of the Act, the judge shall give such directions as to the procedure to be followed, and the notices to be given to and the attendance of all such persons as may be interested as he shall think fit, and he (or the registrar, if so directed by him) shall consider what may be urged (either orally or in writing) by or on behalf of such persons, and therefore give his decision: provided that the registrar's decision may be varied by the judge pursuant to Rule 7. Rule 13, relating to certificates of decisions, shall apply to a decision under this subsection if so directed by the judge.

[Rule 20

Applications for Stay, Rescission or Variation of Orders or Judgments.

20. An application to the Court for stay, suspension, discharge, rescission or variation of orders or judgments under section 5, subsection (2) or (3) may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

The 9th day of July, 1920.

Birkenhead, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 15 of the foregoing Rules shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

James Parker,
J. Towyn Jones.

I concur in the above order as to fees.

Birkenhead, C.

The 9th day of July, 1920.

APPENDIX.

1.

Summons for Determination of Question or Declaration or Order relating to Increase of Rent under Section 2, subsections (1) or (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on , the day of , at the hour of in the

noon, on the hearing of an application on the part of , of , for the determination, pursuant to the above-mentioned Act, of a question [or for a declaration or order] relating to the increase of rent of certain premises [*or* of part, that is to say (*here specify the part*) , of certain premises], to which the said Act applies, situate at , and known as , of which the applicant is the tenant and you the respondent are the landlord [*or* of which you the respondent are the tenant and the applicant is the landlord], the question being [in respect of the transfer to the tenant of certain burdens and liabilities previously borne by the landlord [*or* in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant], [*or* (*here state the question to be determined or the declaration or order asked for*)] and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination or declaration or order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of

of , for an order that notwithstanding the provisions of the above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of , granted by you the respondent to the applicant [*or* to and assigned by him to the applicant] on certain leasehold property situate at , and known as , on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

3.

Certificate on Application for Determination of Question or Declaration or Order relating to Increase of Rent, under Section 2, *subsections* (1) *or* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court doth pursuant to the above-mentioned Act determine and declare [or order] as follows—

[(a) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the tenant of certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities formerly borne by the

respondent, C.D., [*or* by the applicant, A.B.,] the landlord, that is to say (*here specify the burdens and liabilities transferred*) the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week [*or* are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act]:

[*or* (b) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the landlord of certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities previously borne by the respondent, C.D., [*or* the applicant, A.B.,], the tenant, that is to say (*here specify the burdens and liabilities transferred*) , and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [*or* are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]

[*or as the case may be*].

[*or* (*here state the decision of the Court on the question or matter the subject of the application*).]

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [or the applicant, A.B.,] do, on or before the day of , 19 , to pay to the applicant, A.B., [or to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of £].

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

4.

Order on Application for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court being satisfied that the security of the applicant on certain leasehold property situate at , and known as under a certain mortgage to which the above-mentioned Act applies, dated the day of , granted by the respondent to the applicant [*or* to , and assigned by him to the applicant], is seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable that the said mortgage should be called in and enforced, doth pursuant to the above-mentioned Act order that notwithstanding the provisions of the said Act the applicant, A.B., be at liberty and he is hereby authorised to call in and enforce the said mortgage.

[*If any conditions imposed, add* subject to the following conditions, that is to say:—

]

[*Or*, It is ordered that the application of the applicant, A.B., for an order authorising him to call in and enforce a certain mortgage to which the above-mentioned Act applies, on certain leasehold property situate at , and known as , dated the day of , 19 , granted by the respondent C.D., to the applicant, A. B. [*or* to , and assigned by him to the applicant, A B.,] be and the same is hereby dismissed.

[*Add, if so ordered,*

And it is ordered that the applicant, A. B., be allowed as against the respondent, C.D., his costs of his application, which are hereby allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security created by the said mortgage [*or* that the respondent, C.D., do pay the said sum of £ to the applicant, A.B., on or before the day of , 19].

[*Or*, And it is ordered that the applicant, A.B., do, on or before the day of , 19 , pay to the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

5.

Summons for Apportionment of Rent or Rateable Value of Property under Section 12, *subsection* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for the apportionment of the rent on the 3rd day of August, 1914 [*or* (*if the property was last let before or first let after the 3rd August*, 1914, *insert the date at which it was so let*; see *Act*, *section* 12, *subsection* 1 (a) [*or* the rateable value on the 3rd day of August, 1914 [*or* (*if the property was first assessed after that date, insert the date at which it was first assessed*)] of certain property situate at and known as and comprising certain premises [*or* part, that is to say (*here specify the part*) of certain premises] situate at and known as for the purpose of determining the standard rent [*or* the rateable value] of the said premises [*or* of the above-mentioned part of the said premises] for the purposes of the above-mentioned Act, and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

6.

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of and upon hearing

This Court, for the purpose of determining the standard rent [*or* rateable value] of certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the above-mentioned Act applies, situate at , and known as , and comprised in a certain property known as doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [*or if the property was last let before that date or first let after that date*, on the day of , 19 (*the date on which it was so let*)], shall be apportioned between the said premises [*or* the said part of the said premises] and the rest of the said property as follows, viz.:—

£ to the said premises [*or* the said part of the said premises]; and

£ to the remainder of the said property.

[*or* doth pursuant to the above-mentioned Act declare that the rateable value of the said property on the 3rd day of August, 1914 [*or if the property was first assessed after that date* on the day of , 19 (*the date on which it was first assessed*)], shall

be apportioned between the said premises [*or* the said part of the premises] and the rest of the said property as follows, viz.:—

£ to the said premises [*or* the said part of the said premises]; and

£ to the remainder of the said property.

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [*or* the applicant, A.B.,] do, on or before the day of , 19 , pay to the applicant, A.B., [*or* to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of .]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

7.

Summons for Order of Suspension and Declaration relating to Increase of Rent under Section 2, *subsection* (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 2, subsection (2) of the said Act on the part of of for a declaration that certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant [or where the applicant is the Sanitary Authority state the name of the tenant] is the tenant, and you, the respondent, are the landlord, are not in all

respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or breach of express agreement, if any, and for an order suspending the increase of rent pursuant to Section 2, subsection (2) of the said Act until further order, or for such other declaration, and order in that behalf, as the Court may think fit, and for an order providing for the costs of this application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To (*the respondent, naming him*).

8.

Order on Application for Order of Suspension and Declaration relating to Increase of Rent, under Section 2, *subsection* (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

The Court being satisfied that certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant [or where the Sanitary Authority is the applicant state the name of the tenant] is the tenant, and the respondent is the landlord, are not in all respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or

breach of express agreement doth declare accordingly and doth order. pursuant to Section 2, subsection (2) of the said Act that the increase of rent of be suspended until respondent, upon notice of application in that behalf, shall have satisfied the Court that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed [*or* (such other declaration or order as the Court thinks fit)].

[*Or* it is ordered that the application of the said be, and the same is hereby dismissed.]

[*Add order as to costs, if any.: see Form* 6.]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

9.

Notice of the Application under Section 5, *subsection* (2) *or* (3) *for Stay, Suspension, Discharge, Rescission, or Variation of Order, or Judgment.*

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

Take Notice, that the applicant, A.B., [*or* the respondent, C.D.,] intends to apply to the Judge of this Court on , the day of , 19 , at the hour of in the noon, to stay, [suspend, discharge, rescind *or* vary] the order [*or* judgment] made [*or* given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that (*here recite order or judgment*),
and for an order providing for the costs of this application.

And further Take Notice, that the grounds of my intended application are that

(*here set out circumstances*)

Dated this day of , 19 .

(Signed)

Applicant [*or* Respondent],
[*or* Applicant's [*or* Respondent's] Solicitor].

To (*the respondent or applicant, naming him*),

and to Messrs.
his solicitors,

and to the Registrar of the Court.

10.

Order on Application under Section 5, subsection (2) or (3) for Stay, Suspension, Discharge, Rescission, or Variation of Order or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for the stay, suspension [discharge, rescission *or* variation] of the order made [*or* judgment given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that

(*here recite order or judgment*)

and upon hearing

It is ordered that the said order [*or* judgment] be and the same is hereby stayed, suspended [*or* discharged *or* rescinded *or* varied] as follows:—

(*here set out terms of order*)

[*Or*, It is ordered that the application of the said be and the same is hereby dismissed.]

[*Add order as to costs, if any:* see Form 7.]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and the respondent, naming them*).

11.

Summons on Application for Determination of Question or Declaration and Order under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , the particulars of which are hereunto annexed.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To (*the respondent, naming him*).

PARTICULARS.

[*To be appended or annexed to summons and, if on separate paper, with heading as in summons.*]

1. On or about the day of , 19 , the respondent let certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , to the applicant at a rent of a week [*or* a month, *or as the case may be*] , which rent includes payment in respect of furniture.

2. The applicant alleges that the rent charged for the premises so let to him is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914.

3. The applicant therefore applies to the Court under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—

(a) for a declaration that it is proved to the satisfaction of the Court that the rent charged on the letting of the said premises by the respondent to the applicant is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, and for an assessment by the Court of the amount of such last-mentioned profit; and

(b) for an order that the said rent, so far as it exceeds such sum as would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable; and

(c) for an order that the amount of any payment of rent in excess of such sum made by the applicant in respect of any period after the passing of the said Act shall be repaid to the applicant, and may, without prejudice to any other mode of recovery, be recovered by the applicant by means of deductions from any subsequent payment of rent; and

(d) for an order providing for the costs of this application.

Dated this day of , 19 .

Applicant
[*or* Applicant's Solicitor].

12.

Order on Application under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing ,

The Court doth declare that it is proved to its satisfaction that the rent charged on the letting by the respondent to the applicant of certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , at a rent of a week [*or* a month, *or as the case may be*], which rent includes payment in respect of the use of furniture, is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, which last-mentioned profit is hereby assessed by the Court at the sum of a week [*or* a month, *or as the case may be*].

And it is ordered that the said rent to the extent of a week [*or as the case may be*] being the amount by which the said rent exceeds the sum of per week [*or as the case may be*] , which would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable.

And it is further ordered that the sum of , being the amount of the payments of rent in excess of the said sum of per week (*or as the case may be*) made by the applicant in respect of the period of the said letting after the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shall be repaid to the applicant, and may, without prejudice to any other method of recovery, be recovered by the applicant by means of deductions from any subsequent payments of rent.

[*Add, if so ordered,*

And it is ordered that the respondent do pay the said sum of to the applicant on the day of [*or* by instalments of for every days, the first payment to be made on the day of].]

[*Add also, if so ordered,*

And it is ordered that the respondent do on or before the day of pay to the applicant his costs of this application, which are hereby allowed at the sum of .]

[*Or, if application fails,*

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing

It is ordered that the said application be and the same is hereby dismissed.

[*Add directions, if any, as to costs*

].]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

13 and 14.

For summons and order for leave to distrain adapt forms 5 and 6 under the Consolidated County Courts (Emergency Powers) Rules, 1918.

15.

Summons for Declaration and Order relating to payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 5, subsection (6) of the said Act, on the part of of , for a declaration that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court

(*here give title of action*)

for possession of [*or* ejectment from] certain premises [*or* of part, that is to say,

(*here specify the part*)

of certain premises]
to which the said Act applies, situate at , and known as , of which the applicant was the tenant, and you the respondent were the landlord, was obtained by misrepresentation [*or* the concealment of material facts] and that the applicant is entitled to recover from you compensation for damage or loss sustained by him as the result of the said order [*or* judgment], and for an order ordering you to pay the sum of £ [*or* such sum as shall appear to the Court sufficient] as compensation for such damage or loss, or for such other declaration and order in that behalf as the Court may think fit, and for an order providing for the costs of this application.

And further take Notice, that if you do not attend in person or

by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

To (*the respondent, naming him*). Registrar.

16.

Order on Application for Declaration and Order relating to Payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of and upon hearing

The Court doth declare and adjudge that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court (*here give title of action*) , for possession of [*or* ejectment from] certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant was the tenant, and the respondent was the landlord, was obtained by misrepresentation [*or* the concealment of material facts], and that the applicant is entitled under Section 5, subsection (6) of the said Act to recover against the respondent the sum of £ as compensation for damage or loss sustained by the applicant as the result of the said order [*or* judgment] and it is ordered that the respondent do pay the said sum of £ to the Registrar of this Court on the day of , [*or* it is ordered that the application of the said be, and the same is hereby dismissed].

[*Add order as to costs if any: see Form* 6].

Dated this day of , 19 .

By the Court,

To (*the applicant and respondent, naming them*). Registrar.

1921. No. $\frac{932}{L.\ 12}$.

(For this Order, see *ante*, p. .)

1923, No. $\frac{901}{L.\ 16}$.

LANDLORD AND TENANT, ENGLAND.

Rent (Restrictions on Increase of).

County Court Procedure.

The Rent (Restrictions) Rules, 1923, dated August 7, 1923, made by the Lord Chancellor under the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923 (10 & 11 Geo. 5, c. 17 and 13 & 14 Geo. 5, c. 32).

1. The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920 (S. R. & O., 1920, No. 1261), (hereinafter referred to as the principal Rules) other than Rules 2, 3, 12, 19 and 20 shall be extended to include applications under Part I. of the Rent and Mortgage Interest Restrictions Act, 1923 (hereinafter referred to as the 1923 Act) except under subsection (2) of section 11, and the forms prescribed by the principal Rules shall be used with the necessary modifications accordingly.

2.—(1) The fees payable in the case of any such original application under the 1923 Act shall, if the same could not have been made under the principal Act, be as directed by Rule 15 of the principal Rules in the case of an application under the principal Act for the apportionment of rent. Where the application could have been made under the principal Act the fees shall be as directed by that Rule in the case of such an application.

(2) The costs of any such original application under the 1923 Act whether the same could or could not have been made under the principal Act shall be in the absolute discretion of the Court and the Court in every such case shall fix the amount of such costs.

3. The Court may exercise the power of amendment conferred by subsection (1) of section 6 of the 1923 Act either on an original application by landlord or tenant in that behalf as directed by the foregoing Rule 1, or, where proceedings before the Court are pending in which the validity of any notice of increase is in question or is material, on request by either party at any time in the course of those proceedings.

4.—(1) Where parties desire to have any questions arising under the principal Act or Part I. of the 1923 Act settled by arbitration pursuant to the provisions of subsection (2) of section

11 of the 1923 Act, they shall sign and deliver to the County Court of the district in which the demised premises are situate a request in writing in accordance with the form set out in the Appendix to these Rules, which shall stand as Form 17 in the Appendix to the principal Rules.

(2) On receipt of the application in the case where with the consent of the parties the arbitration is to be before a person nominated by the judge, the judge shall proceed forthwith to nominate an arbitrator and notify the nomination to the parties.

The arbitrator, whether the judge, registrar, or other person, shall, after communication with the parties fix an early date convenient to the parties for the arbitration in the Court Buildings or some other place convenient to the parties, and after hearing the parties or their representatives and the evidence, he shall give his determination in writing either at the arbitration or afterwards as soon as may be and shall deliver the same to each of the parties or their representatives.

(3) The Arbitration Act, 1889 (52 & 53 Vict. c. 49), shall not apply to an arbitration under subsection (2) of section 11 of the 1923 Act.

(4) The only fee payable on such an arbitration shall be the sum of 1*l.* 10*s.* which should be sent to the Court with the application. Where a person other than the judge or registrar acts as arbitrator, the fee of 1*l.* 10*s.* shall be handed to him. Where the judge acts as arbitrator, the fee shall be deemed to be included in Schedule A of the Treasury Order regulating Fees in the County Courts. Where the registrar acts as arbitrator, the fee shall be deemed to be included as to half in Schedule A, and as to half in Schedule B, Part I., of that Fees Order.

5. These Rules may be cited as the Rent (Restrictions) Rules, 1923.

Cave, C.

Dated the 7th day of August, 1923.

The Lords Commissioners of His Majesty's Treasury do hereby, with the consent of the Lord Chancellor, order that the fees prescribed by Rules 2 (1) and 4 (4) of the foregoing Rules shall be taken on the proceedings therein mentioned.

George Hennessy,
W. Cope, } Lords Commissioners of His Majesty's Treasury.

I concur in the above Order as to fees.

Cave, C.

Dated the 7th day of August, 1923.

APPENDIX.

17.

FORM OF REQUEST FOR ARBITRATION UNDER SECTION 11 (2).

In the County Court of holden at .

In the Matter of the Rent and Mortgage Interest Restrictions Act, 1923.

Whereas certain questions have arisen between us in relation to the tenancy of

under or in connection with the principal Act or Part I. of the above-mentioned Act of 1923 that is to say

we hereby request the judge or registrar of the above court [or some person to be nominated by the judge]* to act as arbitrator between us and determine the above questions under section 11 (2) of the Act of 1923 such determination to be final and conclusive and binding upon us for all purposes.

Each of us is to bear and pay his own costs but the Court or arbitrator's fee of £1 10*s.* sent herewith is to be borne by us in equal shares.

The arbitrator may view the premises before determining any question. He may also at the request of either of us exercise the power of amending a notice of increase conferred on the Court by section 6 (1) of the Act of 1923.

(Signature.)

* The words in brackets may be struck out if desired by the signatories.

INDEX.

Actual Possession, 114.

Agreement. *See* Contract.

Agricultural Committee, 48, 129.

Agricultural Work,
recovery of premises for, 48.

Alternative Accommodation,
meaning of, 8, 42, 43, 44.
onus of proof as to, 42, 43.
when not essential, 7, 8, 47, 49.

Annoyance,
meaning of, 40, 41.

Appeal,
when no appeal from County Court, 29, 30, 74, 107, 108.

Apportionment
of mortgage, 78.
of rent or rateable value, 74, 75, 81.

Arbitration, 123, 174, 175, 176.

Arrears,
entry of irrecoverable, in rent book, penalty for, 83.

Assignee,
position of, 68.

Assignment,
effect of, 46.
of statutory tenancy, 46, 68, 86.

Attendance,
rent including, 3, 71.

Attornment Clause, 56.

Bankruptcy, 39, 67, 86.

Board,
rent including, 3, 68, 70.

Burdens,
transfer of, to tenant, 2, 28, 29.

Business Premises,
application of Act to, 3, 50, 72, 73, 81, 82.

Cancelling
increase of rent, 23.

Certificate
of Ministry of Agriculture, 48, 129.
of Sanitary Authority, 27, 28, 29.
forms of, 160, 164.

Chambers, 69.

Child,
possession required for, 41, 43, 49.

City of London Court, 151.

Club,
lease to, 73.

Conditions
of statutory tenancy, 85, 86, 87.
on suspending order for possession, 50, 51.

Contract
by tenant or mortgagor to pay increase, 10, 23, 34.
that the Act shall not apply, void, 6, 37, 38.

Conversion
of house into flats, 4, 73, 80.

Copyhold,
covenant to surrender, 77.

Corn Production Act, 48.

Costs,
disallowance of, in High Court, 89, 90.
how dealt with, 156.
scale of, 156.

County Court,
Act not a statutory defence for purposes of, 37, 90.
appeal from, where no, 28, 29, 74, 108.
applications to, 24, 26.
power to determine questions, 123.
registrar, jurisdiction of, 154, 157, 171.
exclusive jurisdiction, of, 29, 89, 90, 107, 108.

Court,
to what, applications made, 90.
whether Act need be specially pleaded before, 37, 90.

Courts (Emergency Powers) Acts,
repeal of, 16, 54, 57, 97.

Covenant,
breach of, 39, 40.

Date. *See under* Time.

Damages,
liability of landlord who recovers possession by false statement, 53.

Death of Tenant, 67, 68, 86, 157.

Decontrolled Houses,
may be recontrolled, 53.
mortgages of, 70, 115.
sublease of part of, 114.
what are, 114, 115.

Demobilised Soldier, 45, 48.

Discovery of Documents, 155.

Distress,
prohibition of, 54.

Dominant Purpose,
whether material, 72.

Double
rent or value, 38, 39.

Drains, 24.

Duration of Act, 2, 17, 112.

Dwelling-houses,
what, within the Act, 3, 4, 69, 70, 71, 72, 73.

Ejectment Order,
enforcing, costs of, 157.
made before Act, rescission or variation of, 50.
obtained by false statement, 53.
as to part of premises only, 44.
powers of Court on application for, 36 *et seq.*
restriction on making, 6, 7, 37—50.
when obtainable, 6, 7, 37—50.
varying, 51.

Employee. *See* Servant.

Equitable,
charges, 76, 77.
mortgages, 76, 77, 78.

Evidence,
discovery and inspection of documents, 155.
alternative accommodation, of, 43, 44.
no affidavit except by leave, 154.
on application as to death of intestate, 157.
witnesses, 155.

Execution,
Court's power to stay, 50.
rent, recovery of, in, 54.

Executor,
position of, 67, 68, 87.

Family,
meaning of, 43, 68.

Farm,
mortgage of, 76.

Fees,
on application to County Court, 155, 156.
on arbitration, 171.

Fine,
taking of, on lease, 59, 60.

Fixtures, 73, 86.

Flats,
converted, not within Act, 4, 80, 81.
may be dwelling-house within the Act, 75, 80, 81.
service, 70, 71.

Foreclosure, 15, 35, 58.

Forfeiture of Lease, 40, 52.

Former Tenant,
effect of notice of increase to, 32.
obtaining possession, 45.

Forms,
of request for arbitration, 176.
of statutory notice of increase of rent, 31, 32, 96.
of statutory validating notice, 110.
of summons, 158, 159, 160, 163, 165, 170, 176.
prescribed, 158—173.
supply of, 157.

Furnished Houses, 4, 13, 61, 62, 68, 70, 71.

Garage, 72.

Government Department,
housing workmen during war, 81.

Ground Rents, 79.

Hardship, 49, 124.

Hearing in Private, 89.

High Court Jurisdiction under the Acts, 30, 89, 90.

Hotel, 72, 73.

Houses,
reconstructed, 64, 75, 80.
what, within Act, 3, 4, 68, 69, 70, 71, 73, 79.

Housing, Town Planning, &c. Acts, 16, 45, 84.

Husband or Wife of Tenant, 44, 49, 67.

Immoral Purpose,
use of premises for, 40, 41.

Improvements,
raising rent for, 24.

INCOME TAX,
increase of rent and, 27.

INCREASE,
cancellation of, by landlord or mortgagee, 23.
date by which to determine, 22, 36.
effect of, 23.
of rent, statutory form of notice, 30, 31, 32, 96.
partial subletting, for, 118, 119, 120.
prohibition of,
interest, 14, 19.
rent, 5, 19.
repairs, in respect of, when application to court needed, 9, 27.
standard rent, whether possible up to, 9, 23.
suspension of, 24, 28, 117.
when permitted,
interest, 15, 30, 31.
rent, 8, 9, 10, 21, 22, 23, 30, 31.

INSTALMENTS,
mortgage repayable by, 15, 56.

INTEREST,
increased, not recoverable, 14, 21, 22.
permitted increase, 15, 33, 36.
standard, 14, 65, 66.
time limit for recovering overpayments, 95, 121.

IRELAND,
application of Acts to, 3, 92, 93, 94, 110.

JURISDICTION OF HIGH COURT, 89, 90.

JURY,
right to, 17, 90.

"KEY-MONEY," 58, 59, 87.

LAND,
position when let with house, 69, 73.

LAND CHARGE, 68.

LAND TRANSFER ACTS,
charges under, 68.

LANDLORD,
liability for recovering by false statement, 53.
meaning of, 67, 68.
so by purchase, 7, 8, 49.

LEASE,
at will, 48, 67.
expiration of, tenant protected, 38.
fine on granting, 58, 59, 121, 122.

LEASEHOLDS,
mortgages of, when enforceable, 56.

LICENSED PREMISES, 8, 29, 46, 65, 71, 72.
effect of tie, 29, 64.

Linoleum,
effect of inclusion in letting, 4.
lease to, 73.

Local Authority
requiring premises, 16, 44.

Lodgers,
Act how far applicable to, 13, 43, 45, 65, 69, 119.
meaning of, 65, 119.
provisions as to, 40, 43, 45.

Lodging House, 73.

Military Service,
house bought after, 45.
house vacated for, 45, 48.

Misrepresentation,
penalty for, 119, 120.
possession obtained by, 53.

Mortgages,
action on covenant, 56.
apportionment of, 78.
consent to enforcement of, 15, 56.
Courts (Emergency Powers) Acts, 16, 57.
created after Act, not affected, 14, 76.
decontrol, effect of, on, 70, 115.
equitable, 14, 76, 77.
foreclosure, 15, 35, 57.
ground rents, 16, 79.
instalments, repayable by, 15, 56, 57.
interest, increase, how far permitted, 33, 34, 35, 36.
land charge, includes, 68.
leaseholds, 15, 56.
lessee of mortgagor, 67.
personal occupation of mortgagor, 70.
possession, taking of, by mortgagee, 35, 56.
purchaser from, 62, 63.
receiver, power of appointment of, 57.
restrictions on enforcement of, 15, 33, 34, 35, 36, 56, 57, 126.
sale in, 15, 34, 35, 36, 55, 56, 57, 58.
standard interest, 14, 65, 66.
sub-, application of Act to, 76.
transfer of, 65.
what, within Act, 14, 69, 76, 78.

Net Rent, 66.

New Houses,
as a result of reconversion, 64, 75, 78.
not within Act, 4, 78.

New Tenant,
rent cannot be unduly raised to, 15, 22.

Notice,
by landlord where tenancy expires after June 24th, 1923..116.
by tenant to abide by existing tenancy, 116.
of application to stay, form of, 167.

NOTICE—*continued.*
increase, statutory, notice of. *See* STATUTORY NOTICE.
to accompany validating notice, 107, 111.
to quit, when necessary, 10, 21, 22, 120.
validating notice, 107, 110.

NOTICE TO QUIT, 10, 21, 22, 120.
receipt of rent after expiry of, 88, 89.
statutory notice equivalent to, 11, 100, 101, 118.
tenant holding over after, 38, 41, 84.
when necessary, 11, 20, 22, 120.
where tenancy expires after June 24, 1923..116, 117.
whether necessary against statutory tenant, 86.

NUISANCE,
recovery of premises for, 16, 40, 41.

OCCUPATION,
required by landlord for business, 41, 42, 44, 49.
for child, 41, 42, 49.
for employees, 41, 42, 48, 49.

OCCUPYING TENANT,
as test of applicability of Acts, 69, 70.

ORDER,
form of, to enforce mortgage, 162.
to suspend increase of rent, 166.
to stay, suspend, &c. judgment, 168.
under sect. 9..170.
for compensation (sect. 5 (6))..173.

OVERPAID RENT OR INTEREST,
ascertained so to be by apportionment, 74.
recovery of, 82, 83, 95, 102, 121.
time limit, for recovery of, 81, 83, 95, 121.

POSSESSION,
Court's discretion as to ordering, 6, 47, 50.
mortgagee in, sale by, 15, 54, 55, 56, 57, 63.
mortgagee in personal, 56, 57.
mortgagor in personal, 54, 56—70.
of part of premises, as to, 44.
obtained by false statement, 53.
receiver not equivalent to, 57.
recovery of, by landlord, 6, 37.
by mortgagee, 52, 55, 56.
sub-tenant, against, 39, 41, 44, 52.
sub-tenant's, effect of, 52, 86.
vacant, 52, 62.
warrant for, how long in force, 51.
warrant for, costs of, 152.

PREMIUM, 58, 59, 60, 87.
on assignment of lease, 87.
excessive price for furniture may be, 121, 122.
on lessor's consent to assignment, 59.

PRIVATE,
power to hear in, 63, 64, 150.

Professional Premises within the Acts, 3, 68, 71, 72.

Progressive Rent, 63.

Public-House. *See* Licensed Premises.

Public Interest,
recovery of possession for purpose of, 44.

Purchaser,
date of "becoming," 50.
effect of Act on, 12, 49, 62, 67.
landlord, included, 67.
standard rent, inquiries as to, 62.
of mortgagee, 55, 56, 57, 63.

Railway Company's Power to Raise Rent, 27.

Raising
interest, meaning of, 14.
restriction on, 15, 21.
when allowed, 21, 30, 33, 34, 35, 36
rent, meaning of, 10, 21, 22, 23.
restriction on, 5, 21.
when allowed, 8, 9, 11, 22, 23, 30, 31, 118, 119.

Rateable Value,
apportionment of, 74.
how affected by Act, 25.
meaning of, 66.
of land let separately, 69, 73.
sometimes constitutes standard rent, 63, 79.
two-thirds of, rent less than, 63, 79.

Rates,
carrying over into fresh rating period, 26, 32, 33, 66
compounding for, 65, 88.
decrease in, effect of, 26.
meaning of, 66.
new houses, 78.
notice to be given when rent raised for, 31, 32.
raising rent for increased, 25, 26, 31, 32, 33.
statement of Act, 84.
under Towns Improvements Clauses Act, 26.
water, 26, 66.

Receiver,
appointment of, 56, 57.

Reconstruction, 64, 73, 75, 78.

Recovery,
fine or premium, 58.
overpaid rent or interest, 82, 83, 94, 95, 102, 121.
possession by landlord, 6, 37.
by mortgagee, 55, 56, 57, 58.

Re-entry by Landlord, 85.

Registrar,
arbitrator, may be, 123.
jurisdiction of County Court, 150, 153, 154, 157, 171.

Re-letting, 22, 30.

Rent,
acceptance of, by landlord, effect of, 88, 89.
arrears of, 102, 121.
book, entries in, 83.
distress for, only with leave, 54.
double, whether recoverable, 38, 39.
ground, 78.
inclusive of service, furniture, &c., 68, 70, 71.
increase of, not recoverable, 5, 21, 22, 121.
effect of, 23.
when allowed, 10, 11, 21, 22, 23, 30, 31, 118, 119.
less than two-thirds of rateable value, 63, 79.
net, 66.
non-payment of, by tenant, 6, 11, 37, 38.
receipt of, after notice to quit, 88, 89.
standard, 63, 64, 65.
statutory form of increase of, 30, 31, 32, 96.

Repairs,
how far ground for raising rent, 24, 26.
increase for, when application to Court needed, 9, 27, 32.
landlord's failure to do, increase may be suspended for, 27, 28, 117.
meaning of, 29, 129.
no power to shift liability for, 2, 29.
tenant must allow landlord to execute, 88.
when landlord deemed liable for, 26, 29.

Repealed Provisions,
effect of Act as to, 95.
text of, 135—150.

Rescission
of ejectment order, 51.

Room,
furnished, 13, 53, 59, 60, 61.
single, may be dwelling-house, 3, 69.

Rules,
authority to make, 89.
text of, 147 *et seq.*

Sale by Mortgagee, 15, 34, 35, 36, 55, 56, 57, 58, 63.

Sanitary Authority,
application to court by, for non-repair, 27.
certificate of, 27, 28, 29, 107, 108, 109, 125, 126, 128, 129.

Scotland,
application of Act to, 90, 91, 92, 130.

Servant,
occupation by, 13, 47.
possession required for, 6, 7, 42, 48.
prospective, 42, 48.

Service Flats, 70, 71.

Service of Summons, 153.

SHOP, 50, 72, 73.

SOLDIER,
recovery of house by, 45.

SPECIALLY ENDORSED WRIT, 48.

STANDARD INTEREST, 14, 65, 66.

STANDARD RENT,
apportionment of, 74, 75, 81.
increase up to, whether possible, 9, 23.
fixed for house, not the tenant, 22.
nature of, 5, 63, 64, 65.
new houses have no, 63, 64.
power of County Court to determine, 123.
rateable value, may be, 63.
rates not to be deducted in computing, 64.
statement as to, 62, 63.
where premises sublet, 65.

STATEMENT OF,
price of furniture, 122.
rates, 84.
standard rent, 62, 63.
sub-letting, 120.
validating notice, to accompany, 107, 111.

STATEMENT OF RATES ACT, 84.

STATUTES,
Administration of Justice Act, 1920...17, 90.
Common Law Procedure Acts, 40.
Conveyancing Acts, 40, 52.
Corn Production Act, 1917...48.
County Courts Act, 1888...51.
Courts Emergency Powers Acts, 16, 54, 57, 83, 97.
Distress for Rent Act, 1737...38.
House Letting and Rating (Scotland) Act, 1920..33, 92, 130.
Housing, Town Planning, &c. Acts, 16, 45, 84.
Income Tax Act, 1918..27.
Increase of Rent Acts, The repealed, 135 *et seq.*
Increase of Rent and Mortgage Interest (Restrictions) Act, 1920..21.
Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923..98.
Interpretation Act, 16, 94, 95.
Landlord and Tenant Act, 1730..39.
Poor Rate Assessment and Collection Act, 1869...88.
Prevention of Eviction Act, 1924..131.
Rent Restrictions (Notices of Increase) Act, 1923..99.
Rent and Mortgage Interest Restrictions Act, 1923..112.
Small Tenements Recovery Act, 1838...48, 51.
Statement of Rates Act, 1919...84.
Towns Improvements Clauses Act, 1847..26.
Valuations (Metropolis) Act, 1869..25.

STATUTORY NOTICE OF INCREASE,
altered by statute, 96, 118.
amend, power to, 118.
as notice to quit, 100, 101, 118.
defects in, 32.
effect of, 23.
existing tenancy, during, 31.

STATUTORY NOTICE OF INCREASE—*continued.*
form of, 96.
fresh, not necessary on change of tenant, 11, 31, 32.
served before expiry of notice to quit effective, 32.
signature of, 32.
when not required, 31, 119, 120.

STATUTORY TENANCY,
assignable, not, 86.
conditions of, 8, 85, 86.
expiration of, 84, 86.
nature of, 86, 87.
sub-letting of, 86.

STATUTORY UNDERTAKING,
definition of, 68.
recovering possession for, 45.

STAYING EXECUTION, 51.

STREET IMPROVEMENTS,
raising rent for, 24.

STRUCTURAL ALTERATIONS,
raising rent for, 24.

SUB-LETTING,
by statutory tenant, 86.
covenant against, 40, 46, 52.
effect of, 45, 46, 69.
effect of decontrol on, 114.
furnished, effect of, 70.
standard rent on, 65.
without consent, prejudicial effect of, 45, 46.

SUB-TENANTS, 1, 3, 39, 40, 41, 44, 45, 52, 68, 70, 114.

SUMMONS,
applications under Act to be by, 153.
Forms of,
for determination of questions under sect. 2 (1) (3)..158.
for order to enforce mortgage of leaseholds, 159.
for apportionment of rent or rateable value, 163.
for suspension of increase of rent, 161.
for determination of questions under sect. 9..169.
for compensation under sect. 5 (6)..172.
preparation of, 153.
service and substituted service of, 153.

TENANT,
at will, 48, 67.
giving notice and failing to quit, 41.
monthly, 103, 104.
new, gets benefit of Act, 5, 22.
obligation to allow landlord to repair, 88.
profit on giving up possession, cannot take, 87.
statutory. *See* STATUTORY TENANCY.
weekly, 22, 99, 103, 104.
yearly, 38, 103.

TIED HOUSE, 29, 64.

Time,
for application to vary, &c. order, 150.
for service of summons, 149.
for recovering overpaid rent and interest, 81, 82, 95, 121.
for testing right to possession, 39.
of increase commencing, 22.
to consider circumstances in ejectment action, 39.

Transfer,
burdens, of, 2, 28, 29.
mortgage, of, 65.
proceedings, of, 150.

Vacant Possession, 52, 62.

Warrant for Possession,
how long in force, 51, 52.

Waste,
recovery for, 40.

Water Rents and Charges, 66.

Weekly Tenants, 22, 99, 103, 104.

Widow,
right to hold on, 67.

Will, Tenant at, 48, 67.

Witnesses, 155.

Workman,
housed by Government Department during war, position of, 81.

Yearly Tenant, 38, 103.

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